

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-1075

~~T-6981~~

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

WILLIAM G. WRIGHT,
Defendant-Appellant.

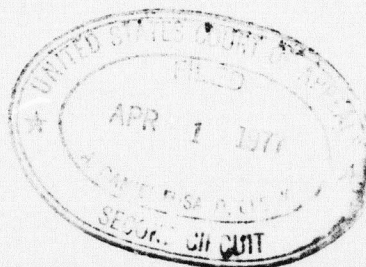
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

JOINT APPENDIX

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EXHIBITS.

(Not Printed.)

Government's Exhibits:

- Exhibit 1—Grand Jury Impaneling Order 1-13-75.
Received in evidence at page 177.
- Exhibit 2—Court Minutes 1-21-75. Received in evidence
at page 177.
- Exhibit 5—Grand Jury Subpoena—Allied Claim Ser-
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- Exhibit 6—Allied Claim Services File No. 2-A-23119.
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- Exhibit 7—Retainer Statement re William Wright.
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- Exhibit 9—Buffalo Police Report 1-24-72. Received in
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- Exhibit 10—Precinct 6 Time Report Period Ending 1-
26-72. Received in evidence at page 147.
- Exhibit 11—Precinct 6 Time Report Period Ending 2-9-
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- Exhibit 12—X-ray Records of William G.
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evidence at page 104.
- Exhibit 13—Training Record of William G. Wright.
Received in evidence at page 172.
- Exhibit 14—Attendance Records—Police Academy.
Received in evidence at page 173.
- Exhibit 15—Form P-73 from Capt. Morrissey of the P/A
to Lt. Schilcot. Received in evidence at page 176.
- Exhibit 16—Letter to Spiro Const—Family Court 9-28-
70. Received in evidence at page 176.
- Exhibit 17—Letter to Michael Dillon, District Attorney.
Received in evidence at page 176.

IV.

Exhibit 18—Course Outline of Study, Basic Recruit Course at the Police Academy. Received in evidence at page 170.

Exhibit 19—Document of Scott Investigation. Received in evidence at page 278.

Court's Exhibit:

Exhibit 3—Note From Jury. Marked at page 328.

Docket Entries.

Date	Proceedings
7/ 7/76	Filed Indictment.
7/ 8/76	P.B.M.—Defendant being duly arraigned enters a plea of Not guilty; Defendant's motions are to be filed by 7/16/76; Government's response to be filed by 7/28/76; Argument of motions is scheduled 8/3/76; Defendant released on his own recognizance.
7/16/76	Filed defendant's notice of pre trial motions—Inspection of the Grand Jury minutes, Inspect & copy, Brady material, and etc., ret. 8/3/76—Magistrate.
7/30/76	Filed Govt's response to pre-trial motions for discovery.
8/ 3/76	P.B.M.—No appearance for the defendant; Adj. to 8/10/76 for argument.
8/10/76	P.B.M.—No appearance for deft. By letter Atty. Nicholas Sargent advised that motion would not be argued orally but would be submitted on the motion papers. Motion decided—discovery is complete.
8/18/76	Filed Govt's motion to move action for trial.
10/ 1/76	Meeting with the Court. Trial October 12, 1976.
10/19/76	Pretrial conference held.
10/19/76	Govt. moves case ready for trial before Visiting Judge Charles L. Bricant, Jr., at Buffalo, New York, the jury is duly empaneled. Jury is excused until trial begins, 9:30 a.m. Friday, October 22, 1976.

Docket Entries.

Date	Proceedings
10/22/76	Pretrial conference held. Motion to vacate subpoenas re Brinkworth, & Mernan-granted.
10/22/76	The jury selected on October 19, 1976 is sworn. Witnesses testify for the Govt. The jury is excused until 10:15 Tuesday.
10/26/76	Filed five subpoenas—Richard Marvin, served 10/20/76; Victoria Hollinger, served 10/21/76; Richard Marvin, John R. Chatmon, served 10/22/76 and Victoria Hollinger, ret. non-served; and Six subpoenas (D.T.)—Dr. John P. Mernan, served 10/20/76; Millard Fillmore Hospital, served 10/20/76; Kevin J. Brinkworth, served 10/22/76 and Kevin J. Brinkworth, issued on 10/19/76, Millard Fillmore Hospital issued on 10/19/76; and Dr. John P. Mernan, issued on 10/19/76, returned no-served.
10/26/76	Trial continues from Friday with the same appearances. The Government rests. The jury is excused. On motion of Deft. the Court acquits the deft. on Count Two of the Indictment. The jury returns and is informed by the Court that Count Two is no longer before them. Trial is adj. until tomorrow.
10/27/76	Trial continues from yesterday with the same appearances. The Jury retires to deliberate upon their verdict. The jury returns with the following verdict: Guilty on Count One. The jury is polled. Jury is excused.

Docket Entries.

Date	Proceedings
10/27/76	The defendant is directed to report to the Probation Officer for presentence report. Bail is continued. Sentence is deferred until 11/30/76 at 3:00 P.M.
10/27/76	Filed Govt's request to charge.
11/ 2/76	Filed two subpoenas—James Davis, Capt. Harlan Schlesinger, served 10/22/76.
12/20/76	Filed Deft's memorandum Of Law.
12/20/76	Deft. is sentenced as follows: Six (6) Months imprisonment. Bail is continued pending appeal. BRIEANT, J.
12/28/76	Filed deft's. notice of appeal.
1/12/77	Copy of notice of appeal, form A and docket entries mailed to CCA.
2/24/77	Filed Transcript of trial proceedings—10/18/76; 10/22/76—Volume I.
2/24/77	Filed transcript of trial proceedings taken on 10/26/76 and 10/27/76—Volume II.
2/24/77	Filed Transcript of sentence taken on 12/20/77.
3/ 1/77	Original papers mailed to the CCA.

Original Indictment.

**IN THE
DISTRICT COURT OF THE UNITED STATES
For the Western District of New York**

THE UNITED STATES OF AMERICA,

vs

WILLIAM G. WRIGHT.

November 1974 Session
(Impaneled January 21, 1975)

No. CR 76-118
Vio. Title 18, U.S.C.,
Sections 1623 and 1503

COUNT I

The Grand Jury Charges:

That on or about the 20th day of May, 1975 in the Western District of New York, the defendant William G. Wright, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly empaneled and sworn in the United States District Court for the Western District of New York, did unlawfully and knowingly make certain false material declarations as hereinafter described:

Original Indictment.

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into alleged violations of Sections 371 and 1341 of Title 18 of the United States Code, relating to the negotiation and settlement of automobile accident claims submitted to insurance companies by an attorney, Kevin J. Brinkworth, on behalf of his clients.

2. It was material to the aforesaid investigation to ascertain the circumstances surrounding an automobile accident involving the defendant William G. Wright, a client of attorney Kevin J. Brinkworth, which allegedly took place on January 24, 1972, including the manner in which the accident occurred, the injuries suffered by the defendant William G. Wright, the medical treatment received by the defendant William G. Wright for said injuries, and the time lost from work by the defendant William G. Wright on account of said injuries.

3. At the time and place aforesaid, the defendant William G. Wright appeared as a witness before the aforesaid Grand Jury, and then and there being under oath testified falsely before said Grand Jury with respect to said material matters as follows:

Q. Were you involved in an automobile accident while on duty on or about January 24, 1972?

A. I really don't remember.

* * *

Q. Well, you've had a number of accidents. Have you been represented by attorneys in connection with all of them?

A. No.

Q. How many of them?

A. I don't remember.

Original Indictment.

Q. Who had you retained—have you retained the same attorney?

A. Have I retained what same attorney?

Q. Same attorney for all the—

A. I don't remember retaining any attorney.

* * *

Q. How many other accidents have you had during the past six, seven years?

A. I couldn't tell you. I don't know.

Q. Why couldn't you tell me? Is it that many?

A. Well, I couldn't tell—tell you. I don't remember. I remember that one specifically because of talking to Mr. Marvin. Working in the patrol car you're apt to have a few accidents, minor accidents, et cetera, you know, what do you consider an accident?

* * *

Q. Have you had more than ten accidents?

A. I couldn't say.

* * *

Q. Have you ever submitted any claims to their insurance companies?

A. For damage, physical damage or—

Q. For anything?

A. Not that I remember. I might have had some vehicle damage, then I wouldn't—you're referring to when I'm working, right?

Q. During the five years in the police department?

A. While I'm working?

Q. No, any accidents during the past five years?

A. No, I don't believe I ever submitted any claims.

* * *

Original Indictment.

Q. Were you injured in this automobile accident?

A. I believe. I remember going to a doctor. Was I injured? I think—I don't know. I don't remember.

Q. You don't remember whether you were injured in the accident?

A. It wasn't serious if I was.

Q. It was not serious?

A. I don't remember having any serious injuries.

* * *

Q. What doctor did you see?

A. I couldn't tell you his name.

Q. You couldn't tell me what doctor you saw?

A. No.

Q. Where does he practice?

A. I don't even know where he lived—practiced.

Q. You don't know where his office is?

A. No.

* * *

Q. How did you get the name of the doctor that you went to see?

A. I don't remember.

Q. You don't recall where he was?

A. That was three years ago. I don't remember.

Q. You don't recall you injuries?

A. No.

Q. You don't recall what doctor you saw?

A. No.

Q. You don't recall where you went to see him?

A. No.

Q. Do you recall what he looks like?

A. No. He was white.

Q. Do you recall what treatment you received?

Original Indictment.

A. No.

Q. Do you recall how many times you went to see the doctor?

A. No.

Q. Did you go to see the doctor more than once?

A. I don't recall.

Q. Did you go to see the doctor more than ten times?

A. I don't recall.

* * *

Q. You have no idea what doctor you saw, Mr. Wright?

A. No. I have no idea.

Q. Do you know if you went to see him more than twenty times?

A. I don't recall.

Q. In other words, it could be more than twenty times?

A. I don't recall.

Q. Do you recall going to see him more than once?

A. I don't recall.

Q. In other words, Mr. Wright, you're saying that you may have seen him on only one occasion?

A. In other words, what I'm saying is I don't recall.

Q. Well, did you see him more than forty times?

A. I don't know.

Q. You mean it's possible that you actually went to see the doctor on forty times or more than that?

A. I don't know, that's what I mean.

Q. You are unable to estimate anywhere between one and forty times?

A. I am unable to estimate.

Original Indictment.

Q. In other words, it could have been just one time?

A. I don't know.

Q. And then again, it could have been forty times, is that correct?

A. I don't know.

* * *

Q. How about one hundred times, Mr. Wright?

A. I am unable to—

Q. Just answer that question?

A. I am unable to speculate on how many times I have seen the doctor. I know I've seen him once because I remember he was a white doctor. How many times other than that, I don't know.

Q. Do you know if it was more than a hundred?

A. I don't remember.

Q. In other words, if you say you don't remember what you're saying is, there's a possibility you saw him on at least one hundred occasions, is that your testimony—

A. No.

Q. —that you may have seen—

A. That's what you're saying.

Q. Is that your testimony?

A. No. My testimony is I don't remember.

* * *

Q. Now, didn't—is it within the realm of possibility that you recall it, that you assume one hundred times or more?

A. I don't remember.

* * *

Q. Did you lose any time from work on account of this accident?

A. I don't remember.

Original Indictment.

Q. You don't remember?

A. No, I don't. I—I'm very vague in that three years ago is a long time.

* * *

Q. And, is your testimony here you have no recollection as to an approximate number of times that you saw this doctor after the accident in January of '72?

A. That's correct.

* * *

Q. What possessed you to go to the doctor if you don't recall any injuries?

A. Well, what possessed me to go to the doctor?

Q. Why did you go to a doctor if you don't recall a bump or scratch or whatnot?

A. I remember after the accident I was talking to the lawyer about it—I can't say. I don't know. I don't remember.

* * *

Q. Did the doctor ever send you a bill?

A. Not that I remember. I don't know.

* * *

Q. How could you have a lawsuit if you can't testify to any injuries, any lost wages, any—

A. I don't remember. I didn't say I could testify. I just say I don't remember.

* * *

Q. You say you didn't lose any money from work?

A. I don't remember.

* * *

Q. Do you remember what you did at the time of the accident?

Original Indictment.

A. No. I remember going down the street, we were going to an emergency situation and I hit the side of a Volkswagen. That's all I remember about it.

Q. Did you continue on your original call? Did you follow-up to the emergency call?

A. I don't remember that either. The procedure would have been—

Q. What procedures do you have—

A. It would have been to stop right there and to call the accident investigation unit and they would come out any time there's a city involved accident, that would be the procedure. Whether I followed that procedure or not, I don't remember at this point.

* * *

Q. So, you went back to the station house after the accident?

A. I don't remember if I went after the accident or went on the emergency call, then went back to the station. I don't remember.

* * *

Q. How many times did you see the police surgeon?

A. I don't remember. I don't remember even seeing the police surgeon. I'm sure he would have a record of it, though.

Q. Who told you to go to the doctor?

A. I don't remember. It must have been Mr. Brinkworth or Marvin, one of the two, 'cause I didn't know the doctor and I still don't know the doctor.

Q. When was the last time you saw the doctor?

A. I don't remember.

Q. Was it in the course of your treatment with him?

A. I couldn't say.

Original Indictment.

Q. You don't know if you seen him after you stopped going to him for treatment?

A. Pertaining to this accident?

Q. No. Just, have you seen him since you finished your treatment with him?

A. I don't know.

* * *

Q. Did you ever go to see this doctor again with any other individual?

A. I don't know. I don't—I don't remember.

Q. You don't remember?

A. No.

Q. Do you remember the doctor's name?

A. No. I don't.

Q. Did you lose any time from work?

A. I don't know.

Q. You mean if you had an accident and like you say this is your first accident you have ever been in that you reported a claim, you wouldn't know if you lost any time from work?

A. I don't know if I lost any time. I'm sure his records would clarify it.

* * *

Q. Did Mr. Brinkworth talk to you and Marvin together about the accident?

A. I don't remember.

* * *

Q. Did you have X-rays taken?

A. I believe I did. I'm not sure.

Q. Did they ever send you a bill for that?

A. Not that I know of. I don't remember if they did.

Q. What part of your body did they take X-rays of?

Original Indictment.

A. I don't remember if they took X-rays or not. If they did, I don't know what type of X-rays they took.
* * *

Q. Did you go to a hospital for any X-rays?

A. I don't even remember taking X-rays.

If I did, I couldn't tell you what hospital.
* * *

Q. Do you remember where you were going when you had the accident?

A. To the call.

Q. Do you remember what the call was?

A. No, I don't.
* * *

Q. Did you ever go to see your doctor with Marvin where you were both scheduled on the same day at the same time?

A. No. I don't remember.
* * *

Q. What kind of treatment did you receive from the doctor?

A. I don't really remember.

Q. Do you remember in what area of the body your injuries were?

A. No.
* * *

Q. The vehicle that you hit, how did that happen, do you remember the circumstances immediately around that? Was the car ahead of you in the street, was it coming toward you?

A. I hit it head-on, so it must have been in front of me, on the side, I didn't back into it, but that's all I remember about it.

Original Indictment.

Q. What caused you to hit that car head-on?

A. I don't remember.

Q. You didn't know the reason for it?

A. I don't know what caused—

Q. You don't remember?

A. No, I don't. It's all in the accident report. You have a copy of the accident report.

* * *

Q. Was the car standing in front of you or was it moving at the time that you struck it?

A. I don't recall what caused the accident.

* * *

Q. Can you recall what Marvin was doing at the time of the accident? Was he sitting up, talking on the radio—

A. I don't remember what he was doing.

* * *

all in violation of Title 18, United States Code, Section 1623.

COUNT II

The Grand Jury Further Charges:

On or about the 20th day of May, 1975, in the Western District of New York, the defendant William G. Wright, while testifying under oath as a witness before a Grand Jury of the United States, which had been duly empaneled and sworn in the United States District Court for the Western District of New York, did corruptly obstruct and impede and endeavor to obstruct and impede the due administration of justice by giving false and evasive answers to questions put to him as a witness before said Grand Jury, which questions and answers

Original Indictment.

are set forth in paragraph 3 of Count I of this indictment and are realleged and incorporated herein as though fully set out in this count of the indictment; all in violation of Title 18, United States Code, Section 1503.

.....
Richard J. Arcara,
United States Attorney.

A TRUE BILL:

.....,
Foreman.

Redacted Indictment.

**IN THE
DISTRICT COURT OF THE UNITED STATES
For the Western District of New York**

THE UNITED STATES OF AMERICA,

vs.

WILLIAM G. WRIGHT.

November 1974 Session.
(Impaneled January 21, 1975.)
No. CR 76-118.
Vio. Title 18, U.S.C.,
Sections 1623 and 1503.

COUNT 1

The Grand Jury Charges:

That on or about the 20th day of May, 1975 in the Western District of New York, the defendant William G. Wright, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly empaneled and sworn in the United States District Court for the Western District of New York, did unlawfully and knowingly make certain false material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into alleged violations of

Redacted Indictment.

Sections 371 and 1341 of Title 18 of the United States Code, relating to the negotiation and settlement of automobile accident claims submitted to insurance companies by an attorney, Kevin J. Brinkworth, on behalf of his clients.

2. It was material to the aforesaid investigation to ascertain the circumstances surrounding an automobile accident involving the defendant William G. Wright, a client of attorney Kevin J. Brinkworth, which allegedly took place on January 24, 1972, including the manner in which the accident occurred, the injuries suffered by the defendant William G. Wright, the medical treatment received by the defendant William G. Wright for said injuries, and the time lost from work by the defendant William G. Wright on account of said injuries.

3. At the time and place aforesaid, the defendant William G. Wright appeared as a witness before the aforesaid Grand Jury, and then and there being under oath testified falsely before said Grand Jury with respect to said material matters as follows:

Q. Were you involved in an automobile accident while on duty on or about January 24, 1972?

A. I really don't remember.

* * *

Q. Well, you've had a number of accidents. Have you been represented by attorneys in connection with all of them?

A. No.

Q. How many of them?

A. I don't remember.

Q. Who had you retained—have you retained the same attorney?

Redacted Indictment.

A. Have I retained what same attorney?

Q. Same attorney for all the—

A. I don't remember retaining any attorney.

* * *

Q. How many other accidents have you had during the past six, seven years?

A. I couldn't tell you. I don't know.

Q. Why couldn't you tell me? Is it that many?

A. Well, I couldn't tell—tell you. I don't remember. I remember that one specifically because of talking to Mr. Marvin. Working in the patrol car you're apt to have a few accidents, minor accidents, et cetera, you know, what do you consider an accident?

* * *

Q. Have you had more than ten accidents?

A. I couldn't say.

* * *

Q. Have you ever submitted any claims to their insurance companies?

A. For damage, physical damage or—

Q. For anything?

A. Not that I remember. I might have had some vehicle damage, then I wouldn't—you're referring to when I'm working, right?

Q. During the five years in the police department?

A. While I'm working?

Q. No, any accidents during the past five years?

A. No, I don't believe I ever submitted any claims.

* * *

Q. Were you injured in this automobile accident?

A. I believe. I remember going to a doctor. Was I injured? I think—I don't know. I don't remember.

Redacted Indictment.

Q. You don't remember whether you were injured in the accident?

A. It wasn't serious if I was.

Q. It was not serious?

A. I don't remember having any serious injuries.

* * *

Q. What doctor did you see?

A. I couldn't tell you his name.

Q. You couldn't tell me what doctor you saw?

A. No.

Q. Where does he practice?

A. I don't even know where he lived—practiced.

Q. You don't know where his office is?

A. No.

* * *

Q. How did you get the name of the doctor that you went to see?

A. I don't remember.

Q. You don't recall where he was?

A. That was three years ago. I don't remember.

Q. You don't recall your injuries?

A. No.

Q. You don't recall what doctor you saw?

A. No.

Q. You don't recall where you went to see him?

A. No.

Q. Do you recall what he looks like?

A. No. He was white.

Q. Do you recall what treatment you received?

A. No.

Q. Do you recall how many times you went to see the doctor?

Redacted Indictment.

A. No.

Q. Did you go to see the doctor more than once?

A. I don't recall.

Q. Did you go to see the doctor more than ten times?

A. I don't recall.

* * *

Q. You have no idea what doctor you saw, Mr. Wright?

A. No. I have no idea.

Q. Do you know if you went to see him more than twenty times?

A. I don't recall.

Q. In other words, it could be more than twenty times?

A. I don't recall.

Q. Do you recall going to see him more than once?

A. I don't recall.

Q. In other words, Mr. Wright, you're saying that you may have seen him on only one occasion?

A. In other words, what I'm saying is I don't recall.

Q. Well, did you see him more than forty times?

A. I don't know.

Q. You mean it's possible that you actually went to see the doctor on forty times or more than that?

A. I don't know, that's what I mean.

Q. You are unable to estimate anywhere between one and forty times?

A. I am unable to estimate.

Q. In other words, it could have been just one time?

A. I don't know.

Q. And then again, it could have been forty times, is that correct?

Redacted Indictment.

A. I don't know.

* * *

Q. How about one hundred times, Mr. Wright?

A. I am unable to—

Q. Just answer that question?

A. I am unable to speculate on how many times I have seen the doctor. I know I've seen him once because I remember he was a white doctor. How many times other than that, I don't know.

Q. Do you know if it was more than a hundred?

A. I don't remember.

Q. In other words, if you say you don't remember what you're saying is, there's a possibility you saw him on at least one hundred occasions, is that your testimony—

A. No.

Q. —that you may have seen—

A. That's what you're saying.

Q. Is that your testimony?

A. No. My testimony is I don't remember.

* * *

Q. Did you lose any time from work on account of this accident?

A. I don't remember.

Q. You don't remember?

A. No, I don't. I—I'm very vague in that three years ago is a long time.

* * *

Q. And, is your testimony here you have no recollection as to a approximate number of times that you saw this doctor after the accident in January of '72?

A. That's correct.

* * *

Redacted Indictment.

Q. What possessed you to go to the doctor if you don't recall any injuries?

A. Well, what possessed me to go to the doctor?

Q. Why did you go to a doctor if you don't recall a bump or scratch or whatnot?

A. I remember after the accident I was talking to the lawyer about it—I can't say. I don't know. I don't remember.

* * *

Q. Did the doctor ever send you a bill?

A. Not that I remember. I don't know.

* * *

Q. How could you have a lawsuit if you can't testify to any injuries, any lost wages, any—

A. I don't remember. I didn't say I could testify. I just say I don't remember.

* * *

Q. You say you didn't lose any money from work?

A. I don't remember.

* * *

Q. Do you remember what you did at the time of the accident?

A. No. I remember going down the street, we were going to an emergency situation and I hit the side of a Volkswagen. That's all I remember about it.

Q. Did you continue on your original call? Did you follow-up to the emergency call?

A. I don't remember that either. The procedure would have been—

Q. What procedures do you have—

A. It would have been to stop right there and to call the accident investigation unit and they would come out

Redacted Indictment.

any time there's a city involved accident, that would be the procedure. Whether I followed that procedure or not, I don't remember at this point.

* * *

Q. So, you went back to the station house after the accident?

A. I don't remember if I went after the accident or went on the emergency call, then went back to the station. I don't remember.

* * *

Q. How many times did you see the police surgeon?

A. I don't remember. I don't remember even seeing the police surgeon. I'm sure he would have a record of it, though.

Q. Who told you to go to the doctor?

A. I don't remember. It must have been Mr. Brinkworth or Marvin, one of the two, 'cause I didn't know the doctor and I still don't know the doctor.

Q. When was the last time you saw the doctor?

A. I don't remember.

Q. Was it in the course of your treatment with him?

A. I couldn't say.

Q. You don't know if you seen him after you stopped going to him for treatment?

A. Pertaining to this accident?

Q. No. Just, have you seen him since you finished your treatment with him?

A. I don't know.

* * *

Q. Did you ever go to see this doctor again with any other individual?

A. I don't know. I don't—I don't remember.

Redacted Indictment.

Q. You don't remember?

A. No.

Q. Do you remember the doctor's name?

A. No. I don't.

Q. Did you lose any time from work?

A. I don't know.

Q. You mean if you had an accident and like you say this is your first accident you have ever been in that you reported a claim, you wouldn't know if you lost any time from work?

A. I don't know if I lost any time. I'm sure his records would clarify it.

* * *

Q. Did Mr. Brinkworth talk to you and Marvin together about the accident?

A. I don't remember.

* * *

Q. Did you have X-rays taken?

A. I believe I did. I'm not sure.

Q. Did they ever send you a bill for that?

A. Not that I know of. I don't remember if they did.

Q. What part of your body did they take X-rays of?

A. I don't remember if they took X-rays or not. If they did, I don't know what type of X-rays they took.

* * *

Q. Did you go to a hospital for any X-rays?

A. I don't even remember taking X-rays. If I did, I couldn't tell you what hospital.

* * *

Q. Do you remember where you were going when you had the accident?

A. To the call.

Redacted Indictment.

Q. Do you remember what the call was?

A. No, I don't.

* * *

Q. Did you ever go to see your doctor with Marvin where you were both scheduled on the same day at the same time?

A. No. I don't remember.

* * *

Q. What kind of treatment did you receive from the doctor?

A. I don't really remember.

Q. Do you remember in what area of the body your injuries were?

A. No.

* * *

Q. The vehicle that you hit, how did that happen, do you remember the circumstances immediately around that? Was the car ahead of you in the street, was it coming toward you?

A. I hit it head-on, so it must have been in front of me, on the side, I didn't back into it, but that's all I remember about it.

Q. What caused you to hit that car head-on?

A. I don't remember.

Q. You didn't know the reason for it?

A. I don't know what caused—

Q. You don't remember?

A. No, I don't. It's all in the accident report. You have a copy of the accident report.

* * *

Redacted Indictment.

Q. Can you recall what Marvin was doing at the time of the accident? Was he sitting up, talking on the radio—

A. I don't remember what he was doing.

* * *

all in violation of Title 18, United States Code, Section 1623.

Excerpts of Transcript of Proceedings,
October 18, 1976.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 - vs-)
)
 WILLIAM G. WRIGHT,)
)
 Defendant.)
 -----)

CR: 76-118

BEFORE: HON. CHARLES L. BRIEANT, JR.
(Sitting by Designation)
United States District Judge
Buffalo, New York

DATES: Tuesday, October 19, 1976; and
Friday, October 22, 1976
TIME: 9:30 a.m.
VOLUME: 1 of 2
PAGES: 1 through 161

* * *

Proceedings, October 22, 1976.
Conference in Robing Room.

Buffalo, New York

Friday, October 22, 1976

9:30 a.m.

- - -
(In the robing room; counsel present.)

THE COURT: If I could capsuleize our preliminary discussion very quickly, and if it is not satisfactory to either of you, I hope that you will feel free to say so.

At some point the Government must specify which answers in this Indictment it contends were false and willfully so. I do not believe that they are precluded in bringing before the jury all the answers, including some which may not be material to the investigation of Brinkworth but set forth in the Indictment, to assist the jury in judging what his intentions were or what his state of mind was at the time he was testifying. As I understand it, he testified for a single continuous period on a single part of a single day, and I think that even if answers were willfully false, even if they are not material to the Brinkworth investigation, they can be shown as bearing on his intentions.

I want to make two more points while I'm at it, and then either of you may comment.

BEST COPY AVAILABLE

Conference in Rebing Room.

I don't call this a perjury case, and I usually tell the Government a 1623 case is a false declaration in terms of the statute, and 1621 is perjury. If the defendant's attorney starts calling it perjury, then I think the Government is free to do so. But it is not perjury.

Furthermore, in your pretrial memorandum, Mr. Burns, you say that you are going to call two witnesses who are going to take the Fifth, and I don't believe that is proper. In the absence of a Second Circuit case allowing that type of procedure, I think it is inappropriate for the prosecutor to call a witness when he knows fully well and so states in his pretrial memorandum that the man is going to take the Fifth. I'm willing to have the hearing as to the availability of these witnesses, and I'm willing to make a finding if it is disputed that they would, in fact -- and I am talking about Hernan and Brinkworth, that they would, in fact, take the Fifth. I assume Mr. Sargent does not dispute that these two gentlemen, whose Indictments I have, are intending to assert their privilege against self-incrimination. But if he does dispute it, I will have a hearing, and I will make a finding, and I will instruct the jury that the witness so-and-so is unavailable in this trial, and no inference can be drawn.

Conference in Robing Room.

MR. BURNS: On that score, if I might respond, Your Honor, I have discussed the availability question of Dr. Hernan and Mr. Brinkworth with their respective counsel, and it is not my intention to put them on the witness stand in court if they are intending to take the Fifth. At this stage I honestly don't know if they will or not.

I think the matter should be resolved in chambers. I don't want to contaminate Mr. Brinkworth's case later on, or lead to any publicity unfavorable to him. I don't want to parade him in front of the jury, or the Court, for that matter.

Mr. Doyle told me he would like to meet with you or Mr. Sargent if he could at the close of the morning session, in chambers, if he could discuss the situation. At that time if Mr. Brinkworth says, "I will not testify," as far as I'm concerned, it is a closed question.

THE COURT: What do you say, Mr. Sargent?

MR. SARGENT: You see, there are certain things that Brinkworth could admit to that may not be relevant to his case and that would be helpful to ours.

THE COURT: As I understand it, Brinkworth himself is a member of the bar, and he has competent counsel, ~~and~~ he is perfectly able to decide, with the

Conference in Robing Room.

said of his counsel, whether it is in his interest to come in and testify. If it is in his interest to come in and testify and he does so, I will take his testimony. And if he decides it is not in his interest, and he will exercise his privilege against self-incrimination, then I will permit you to ascertain that that really is his position. If necessary, I will hold a hearing in the absence of the jury, and you can ask him, if you want to, "If called, will you assert your privilege?" But I'm sure you will take Mr. Doyle's word for it.

MR. SARGENT: I'm certain I will.

THE COURT: And I will make a finding that he is unavailable and instruct the jury as a result of a hearing I held earlier that the testimony of the witnesses Mernan and Brinkworth is unavailable and that no adverse inference may be drawn with respect to either party because of failure to call either or both of them.

MR. SARGENT: Your Honor, what I would like to have on the record is some indication from you that at what point in this trial we will be able to move that certain questions and answers of this Indictment are immaterial and under the legal requirements of the Sections that it is maintained the defendant has violated would not have legal sufficiency to go to a jury.

THE COURT: You can move at any time, but I

Conference in Robing Room.

doubt that I could make a definitive ruling as to any of these questions in the absence of a full evidentiary trial record. Before the defendant's case goes forward, I am prepared to redact and physically strike out on your motion any questions and answers in that Indictment which don't belong there.

MR. SARGENT: All right.

THE COURT: And I believe the entire transcript of the Grand Jury testimony will be received in evidence unless there is a compelling reason to eliminate part of it to avoid undue prejudice. I have not read his total testimony. If he said something in there that was so prejudicial as to have to go out, that would be a different matter, but if it is straightforward and similar to all the rest of the testimony, then the whole Exhibit should go in.

Do you have anything in mind at all not to go in?

MR. SARGENT: I do not, not in the Grand Jury testimony. It is the portions of the Indictment that I believe should be withdrawn.

THE COURT: I will hear your motion at any time, and you can renew it, and you can expand it, but I doubt that there is a factual basis for me to do anything with respect to the particular questions and answers until I have heard the Government's case.

Conference in Robing Room.

MR. SARGENT: Thank you, Your Honor.

And I would prefer that the Indictment not be read verbatim to the jury, in the opening. Of course, if the testimony is received in evidence, it will be an Exhibit, and you can read all of it or part of it or anything you wish.

MR. BURNS: In that regard, Your Honor, I have a couple of procedural questions. The Government intends to offer the transcript of the defendant's testimony, through the Court Reporter. Now is it your practice to allow the Court Reporter then to read the testimony or do you have a preference as to how that gets to the jury orally?

THE COURT: I would hear both of you on that subject. I think the ordinary procedure that I have seen is No. 1, I ought to ask, are you willing to stipulate that the Court Reporter recorded it accurately? If you are not, then the Court Reporter could bring his notes and he could testify that he recorded it on these dates.

MR. SARGENT: I am willing to stipulate to that. I also have the problem with Mr. Burns as to how we refer to this. Quite frankly, I am not familiar with how I would refer to this.

THE COURT: Refer to what?

MR. SARGENT: The questions and answers. How

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would I present the questions and answers?

C2 MR. BURNS: My preference is to have the Court Reporter read it entirely.

THE COURT: He can read it or an attorney can read it. Once it is an Exhibit, he can testify that in the regular course of his business, he has done it for twenty years and recorded it on that day or -- or she did, rather -- and then she went back to her office and either dictated it into a machine or she gave it to her note-reader -- in which case you are going to have two witnesses. Then she looked at it, and after it was transcribed, compared it again with her notes and found that it was accurately transcribed except for the following typographical errors, which there must be.

MR. BURNS: Yes, we have a couple.

THE COURT: Then you can offer it, and that would be a sufficient foundation for the Exhibit to come in. And once it is in evidence, any attorney can read from it.

MR. SARGENT: Fine.

THE COURT: If you have a better way or preferred way, of course, I will entertain your suggestions.

MR. BURNS: Thank you. I have another procedural matter. Normally, it is the practice in this District that the Exhibits in the case go to the jury during

Conference in Robing Room.

deliberations. I don't know if that is your practice.

THE COURT: I have been following that practice since I have been here. The last case I did because one of the attorneys for one of the defendants in his summation kept telling them that they can ask for them, that if they asked for them, they would be sent in, and I didn't want to undercut him by making him appear not to know what he is talking about.

MR. BURNS: That is why I bring it up now.

THE COURT: How many Exhibits are there?

MR. BURNS: There are eleven.

THE COURT: I will follow whatever procedures Judge Curtin would have followed if he tried the case.

I don't give the Indictment unless they ask for it, but I suppose you both want the redacted Indictment to go in.

Every juror should have a copy, and that is a matter for your consideration. I certainly shouldn't direct it against your wishes.

MR. SARGENT: What if we did strike and redact? Would we give them an Indictment that was retyped? Would that be omitted?

THE COURT: It would have to be retyped, and either with that omitted or Xeroxed in such a fashion that it would appear to be retyped.

Conference in Robing Room.

This can be off the record.

(Discussion off the record.)

MR. BURNS: A few moments ago, Your Honor, you used the word "willfully" in connection with this Indictment, and it is the Government's position that willfulness is not an element of this offense, and I have some citations to that authority, and normally I would bring it up at the end of the case when we are talking about instructions, but if the Court is going to give instructions once in awhile regarding the elements of the offense, the authority for our position that willfulness is not required is United States versus Lardieri, a Third Circuit case, 497 F2d. 317. I believe willfulness was an element. It still is an element under 1621, but the Courts have held that 1623, false declaration --

THE COURT: Is there any Second Circuit cases other than that?

MR. BURNS: No.

THE COURT: I would read that case if you will furnish me with a Xerox copy of it, but I must say that in a number of these cases which I have tried, I have always charged that willfulness was an element, and I never had any argument with anybody before about it. And, of course, I suppose the difference between "knowingly" and "willfully" isn't that great, and in the

Conference in Robing Room.

absence of Second Circuit authority, I don't see very much in that, but I will read your case.

MR. BURNS: Thank you.

THE COURT: You don't have to know that today, do you?

MR. BURNS: Oh, no. I was just thinking, though, perhaps you might be instructing the jury before we start, generally, as to elements.

THE COURT: No. If I understand the meaning of the word "willfully," to me it would be a reprehensible thing to put somebody in prison for testifying falsely if he was not willful in so doing. Willfully as opposed to accidentally or mistake.

MR. BURNS: I think "willfully," of course, goes a little more than "knowingly."

THE COURT: It is criminal intent, that he intends to lie. I think to convict on this, you have to intend to lie. To be convicted on this, the defendant has to intend to lie.

MR. BURNS: I would agree to that, but our position would be that you can intend to lie for good motives, for good purposes.

THE COURT: Good purposes, no.

MR. BURNS: And I think the law is that a good purpose --

Opening Statement by Mr. Burns.

THE COURT: That brings me to one more thing.
Isn't this Count 2 a real case of overkill?

MR. BURNS: I don't think so. There is a couple
of Second Circuit cases on that, Alo and Cohn cases.

THE COURT: Yes, I have them right here.

Perhaps we ought to continue our discussion
off the record.

(Discussion off the record.)

(Jury present.)

THE COURT: Mr. Burns, you may make an opening
statement on behalf of the Government.

MR. BURNS: Ladies and gentlemen of the jury,
Judge Brieant, as you heard during the voir dire, my
name is Theodore Burns, and I am an Assistant United
States Attorney, and I will be prosecuting this case.

My remarks will be very brief at the outset,
because this case itself should be fairly brief.

The Government's proof will not take very much
time, so I will try not to take very much of your time
right now. The purpose of my remarks now is simply to
give you an outline or an idea of what the case is about
and an idea of what the Government believes it will
prove and intends to prove in the case.

As Judge Brieant earlier told you, the defendant
in this case is William G. Wright. He is charged in

* * *

C. M. Harm, Jr., for Government, Direct.

C L I F T O N M. H A R M, J R.,

called as a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Mr. Harm, where are you employed?

A By the United States Postal Service.

Q What is your position with the Postal Service?

A Postal Inspector.

Q Could you describe the general duties of a Postal Inspector?

A The Postal Inspectors investigate any crime that relates
to the use of the mails.

Q Do your duties include the investigation of Section 1541
of Title 18 of the United States Code?

A Yes, they do.

Q What is that statute?

A That is the mail fraud statute.

Q And do your duties relate in any way to Section 371,
Title 18?

A Yes, they do.

Q What is Section 371?

A That is the conspiracy statute.

Q Mr. Harm, during the course of your employment as a
Postal Inspector, have you ever been involved in an
investigation concerning an individual named Kevin

C. M. Harm, Jr., for Government, Direct.

Brinkworth?

A Yes, I have.

Q When did that investigation begin, to your knowledge, or your involvement with the investigation?

A My involvement began in April of 1974.

Q How did you become involved?

A I received information from the Insurance Crime Prevention Institute.

Q What information did you receive?

A The information basically was that there were indications that fraudulent or allegedly fraudulent medical bills, medical reports and lost wage statements had been submitted to several insurance companies by Mr. Brinkworth on behalf of his clients who had been involved in automobile accidents.

Q At the time when you communicated with the Insurance Crime Prevention Institute, was any material or any information exchanged?

A Yes. The agent from the Insurance Crime Prevention Institute turned over to me photocopies of several insurance company files relating to these accidents.

Q What did you do with these photocopies?

A The photocopies were reviewed. After the review I presented the information that was contained in the files to the Office of the United States Attorney for his con-

C. M. Harm, Jr., for Government, Direct.

sideration.

Q In Buffalo, New York?

A Yes.

Q Did these files involve one particular attorney?

A Yes. They all related to Kevin Brinkworth.

Q Did they relate to the same doctor?

A Yes, Dr. John P. Mernan.

Q After presenting this matter to the United States Attorney, what happened, to your knowledge?

A Well, I had several meetings with the United States Attorney. As a result of the meetings, it was determined that the matter should be presented to the Grand Jury.

Q Do you know what action was taken pursuant to that decision?

A After that decision was made, subpoenas were issued to several insurance companies to obtain the original of the files of which I had photocopies.

Q Do you have personal knowledge of what was done to these subpoenas?

A Most of them I served myself.

Q Mr. Harm, let me show you what has been marked as Government's Exhibit 5 for identification, and can you identify the Exhibit?

A Yes. This is a Federal Grand Jury subpoena directed to the Allied Claim Services, Chamber of Commerce Building,

C. M. Harm, Jr., for Government Direct.

Buffalo, New York. It was served on that firm by me on July 31st, 1974.

Q Does that subpoena direct Allied Claim Services to do anything?

A It directs them to appear before the Grand Jury on August 6, 1974, and to bring with them their File No. 2-A-23119.

MR. BURNS: I offer in evidence at this time Government's Exhibit 5.

MR. SARGENT: I have no objection, Your Honor.

THE COURT: It is received in evidence.

(Government's Exhibit 5 marked in evidence.)

Q After serving this subpoena and the other subpoenas, what else did you do in connection with this investigation?

A Well, during the course of the entire investigation, I was interviewing people, checking the files that were obtained as a result of the subpoenas, and meeting with the U. S. Attorney on many occasions.

Q Were any other decisions made that you were aware of regarding other insurance files in which Mr. Brinkworth represented clients?

A Yes. Based on the few that we had obtained from the Insurance Crime Prevention Institute, it was determined

C. M. Harm, Jr., for Government, Direct.

that an attempt should be made to locate as many files as possible that related to Mr. Brinkworth.

Q And what efforts, to your knowledge, were undertaken to get that information?

A A request was made to the Judicial Conference of the State of New York to obtain all closing and retainer statements that had been filed by Mr. Brinkworth on behalf of his clients.

Q What is a "retainer statement"?

THE COURT: Aren't we getting a little bit offfield? I think what the Grand Jury was investigating is relevant to this case, but what this particular witness obtained from the Judicial Conference, I think he is getting somewhat remote from the issues we are trying here. You may prove that the Grand Jury investigating the activity of Mr. Brinkworth in connection with accident claims, if that is your contention, but what the retainer statement showed, I don't think is necessary.

MR. BURNS: The subpoena, which is Government's Exhibit 5, directs the Allied Claim Services to appear with the file before another Grand Jury, not the Grand Jury before which Mr. Wright testified. I'm offering this

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testimony now of Mr. Harm only to show what was going on between the time that it was presented to the Grand Jury and how it came to be presented to the new Grand Jury.

THE COURT: If he was working on the case during any particular months or years, he may so testify, but I don't have to go into the question of the retainer statements. If there is a retainer statement concerning Mr. Wright, that may be brought in evidence, but not retainer statements generally.

MR. BURNS: Very well, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Harm, was, in fact, a retainer statement received by you from the Judicial Conference relating to Mr. Wright?

A Yes, it was.

Q Let me show you what has been marked as Government's Exhibit 7. Can you identify that document?

A Yes. This is the retainer statement that was filed by Kevin Brinkworth on behalf of William Wright.

Q From whom did you receive this?

A This was received from the Judicial Conference of the State of New York.

MR. BURNS: I offer in evidence

C. M. Harm, Jr., for Government, *Voir Dire*, Direct.

Government's Exhibit 7.

MR. SARGENT: I just have one question on that.

THE COURT: Do you want to have a voir dire examination on it?

MR. SARGENT: Yes.

THE COURT: All right, you may.

VOIR DIRE EXAMINATION

BY MR. SARGENT:

Q Mr. Harm, is Mr. Wright's signature on this?

A No, it is not.

Q Is there anything bearing any notations on that that would indicate that Mr. Wright had seen this?

A No, there is none.

MR. SARGENT: I have no objection.

THE COURT: It may be received in evidence.

(Government's Exhibit 7 marked in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Harm, after the receipt of the Retainer Statement, were other insurance files subpoenaed by the Grand Jury, to your knowledge?

A Yes, they were.

C. M. Harm, Jr., for Government, Direct.

Q What did you do with the subpoenas?

A Again, in most instances, I served the subpoena if the company was located in the Buffalo area.

Q What did the insurance files relate to, to your knowledge?

A The insurance files that were subpoenaed related to automobile accidents in which Kevin Brinkworth was the attorney of record.

Q What else did you do in connection with this investigation after the records were subpoenaed?

A After the records were subpoenaed, the closing and retainer statements were related to the files that we had received. Each file was reviewed, and, again, discussions were had with the U. S. Attorney to determine how the investigation should continue.

Q What was the purpose of the investigation?

A The purpose of the investigation was to determine if, in fact, the medical bills and medical reports and lost wage statements were accurate or were fraudulent as had been alleged.

Q Mr. Harm, during the course of performing your duties, were you ever permitted access to the Grand Jury testimony taken during this investigation?

A Yes, I was.

Q Did you have any authority to review the testimony?

A Yes, I did.

C. M. Harm, Jr., for Government, Direct.

Q And what was that authority?

A Judge John Curtin issued an order that authorized me access to the Grand Jury testimony.

Q I show you Government's Exhibit 8. Could you tell me what that Exhibit is?

A Yes. This is an order signed by Judge John T. Curtin dated March 16, 1976, that authorizes me to have access to the testimony.

Q Mr. Harm, what did you do after this order was signed?

A After the order was signed, I began reviewing testimony that had been taken before the Grand Jury, and again relating it to the accident files.

Q Did you read all the testimony taken before the Grand Jury and the investigation you just outlined?

A Yes, I did.

Q Did you review the insurance files and other documentary evidence which was presented to the Grand Jury?

A Yes.

Q On the basis of your involvement with the case and review of all the evidence before the Grand Jury, can you state what the purpose was for the Grand Jury in calling the defendant, William G. Wright, before it to testify on May 20, 1975?

A The purpose for having Mr. Wright testify was to determine the accuracy of the medical bill from John Mernan

C. M. Harm, Jr., for Government, Cross.

that was in the particular accident file that he was involved in.

Q And did it relate in any way also to any lost wage statements?

A Yes, it did.

Q Did the purpose involve, to any extent, the circumstances surrounding Mr. Wright's automobile accident?

A Yes.

THE COURT: In your answer to the last question, are you suggesting that there were factors concerning the accident other than the validity of the lost wage claims and the medical bills claimed?

A No, sir. The reason we got into the circumstances of the accident was to give us some idea as to the nature of injuries that might have been a result of the accident.

MR. BURNS: I have no further questions.

THE COURT: You may cross-examine,

Mr. Sargent.

CROSS EXAMINATION

BY MR. SARGENT:

Q Mr. Harm, you stated it was part of your investigation interviewing other people. I wonder if you might recollect the names of those other people you were interviewing?

A During the course of the investigation, I interviewed

C. M. Harm, Jr., for Government, Cross.

probably fifty to seventy-five different people.

Q Did you ever interview Police Officer Wright?

A No, I did not.

THE COURT: Was every claimant in every accident file subpoenaed to go to the Grand Jury if Brinkworth had filed a Retainer Statement for his case?

A We subpoenaed everybody that we could locate.

Q In other words, there were other claims, no doubt, other Retainer Statements, no doubt, that involved many of Mr. Brinkworth's clients, is that correct?

A Yes.

Q Do you recall how many Retainer Statements there were for Police Officer Wright?

A There was one.

Q Among how many, sir?

A Approximately five hundred.

THE COURT: During what period of years?

A 1970 through 1974.

Q Was one of those Retainer Statements, as you may recall, for a Police Officer Marvin?

A Yes.

Q You stated that you reviewed the medical bills for Police Officer Wright, is that correct?

C. M. Harm, Jr., for Government, Cross.

A Yes, I did.

Q You also reviewed the lost wage claimed for Mr. Wright, is that correct?

A Yes.

Q Do you recall what his lost wages were?

A There apparently was some confusion in the insurance company file.

Q No, after the confusion was cleared up?

A Okay. After the confusion was cleared up, there were no lost wages for Mr. Wright.

Q The only damages would have been the medical bills, is that correct?

A That's correct.

THE COURT: The only special damages?

MR. SARGENT: Special damages, yes,

sir. I am not a negligence lawyer, as you might know, members of the jury.

Q Was there any information in the file that would indicate that Police Officer Wright had seen those medical bills?

A No.

THE COURT: I think counsel is asking you up to and including the time that he testified, did he ever see them, that you know?

A There was no indication in the insurance file that he had ever seen them, no.

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Q Was there any information in the files that the medical bills were sent directly to the attorney?

A I believe that the medical bill has Mr. Brinkworth's address on it.

Q Was there an envelope in the file that would have been attached to the medical bill?

A No.

Q So the only notation on the medical bill would have been Mr. Brinkworth's address?

A Yes.

Q Was there any information in the insurance file in respect to Police Officer Wright's situation, that Police Officer Wright received any monies from this claim?

A No, there was no indication in the file.

THE COURT: Doesn't the file exist?

MR. BURNS: Yes. It will be offered through another witness, Your Honor.

THE COURT: All right. If that is so, it will really speak for itself what it shows.

You may continue.

Q Have you read Police Officer Wright's testimony before the Grand Jury?

A Yes, I have.

Q Is there any direct knowledge from documents or otherwise that you have that Police Officer Wright was giving false

C. M. Harm, Jr., for Government, Cross.

declarations to those questions?

MR. BURNS: I think that is really an ultimate issue. It is for the jury, and not for the witness.

THE COURT: It is an ultimate issue for the jury. Yet, I think perhaps the question ought to be rephrased, if the witness doesn't understand it. I think he can be asked if he has any direct knowledge on his part as to the falsity of any particular answer.

That is what you are asking?

MR. SARGENT: That's right.

THE COURT: If he can do that, he may do so.

THE WITNESS: Repeat the question.

THE COURT: Re-frame it, please.

Q Based on your review of the insurance documents, other documents, your interviews or otherwise, do you have any personal knowledge that Police Officer Wright gave false declarations to the questions asked to him during the Grand Jury proceedings?

A Well --

THE COURT: I would sustain an objection to that question. You are asking him now, I think, for hearsay. If you want to ask him

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of his own direct personal knowledge that he found either from the papers he looked at or events that he observed, that he may be asked.

MR. SARGENT: That is the question.

THE COURT: You are asking him for hearsay now.

MR. SARGENT: That is the question.

Just answer the question, please.

MR. BURNS: I think the witness got one word out. Let him answer.

THE COURT: I think it almost is a question that he can answer "yes" or "no."

THE WITNESS: Yes.

Q You answered "yes"?

A Yes.

Q What would that answer "yes" be based on?

A It is based mainly on the review of the police report that was submitted after the accident.

Q That police report that you are referring to was submitted in 1972?

A Yes.

Q And your review of that report would lead you to believe that answers given three and a half years later were given knowingly, given as false answers?

A Yes, in my opinion.

C. M. Harm, Jr., for Government, Cross.

Q Based on anything else other than your review of the report of the accident in 1972?

A That is what I would have to base my answer on.

MR. SARGENT: I have no other questions.

THE COURT: As far as this insurance file that you reviewed, it was regular on its face, was it not; the contents of it were regular on their face?

A Yes.

THE COURT: There was nothing about looking at that file that showed you that any fraud had been committed by Mr. Brinkworth or anybody else?

A That's correct.

THE COURT: Or attempted?

A That's correct.

THE COURT: Is there anything else from the witness?

MR. SARGENT: I have no further questions, Your Honor.

MR. BURNS: I have a couple of questions if I may, Your Honor.

THE COURT: You may proceed.

C. M. Harm, Jr., for Government, Re-direct.

REDIRECT EXAMINATION

BY MR. BURNS:

Q Mr. Harm, in response to Judge Brieant's question regarding who testified before the Grand Jury, I believe you said that everybody who was represented by Retainer Statements were subpoenaed. Would you elaborate?

THE COURT: I think he told us everybody he could find. Isn't that what you testified to?

A Yes. I stated that everybody we could locate; however, in some instances we interviewed people prior to their coming in, and if it was determined that their testimony would not be helpful to either Mr. Brinkworth or ourselves, we did not subpoena them. But these people were very few.

Q Were attempts made to locate every single individual who was represented by a Retainer Statement?

A No. We attempted to locate people for whom we had accident files.

THE COURT: I thought you said you looked at five hundred Retainer Statements?

A Yes.

THE COURT: How many of those five hundred did you attempt to subpoena?

A As a result of the review of the Retainer Statements, we were able to locate approximately two hundred and twenty

Stipulation.

accident files that related to the Retainer Statements, and those were the people that we attempted to locate.

Q You mean the persons represented as claimants in these insurance files?

C7

A Yes.

THE COURT: Many files have more than one claimant, husband and wife, and so forth, did they not?

A Yes, sir.

MR. BURNS: I have no further questions.

THE COURT: Anything else from the witness?

MR. SARGENT: I have no further questions.

THE COURT: Very well, sir. You are excused.

(Witness excused.)

THE COURT: Before we go on with the next witness, we are going to take a very brief recess.

Members of the jury, please withdraw to the jury room. Don't discuss the case.

(Recess taken.)

(Jury present.)

MR. BURNS: Mr. Sargent and I have

Stipulation.

entered into an agreement to stipulate to certain testimony that would otherwise be given by a witness under oath on the witness stand.

THE COURT: You may state the stipulation.

MR. BURNS: The stipulation, Your Honor, is that if John Chapman were to testify in this case, he would testify that he was the foreman of the Federal Grand Jury sitting in Buffalo, New York, on May 20, 1975. He would further testify that on that date the Grand Jury was conducting an investigation into alleged violations of Sections 371 and 1341 of Title 18 of the United States Code relating to the negotiations in settlement of automobile accident claims submitted to insurance companies by an attorney, Kevin J. Brinkworth, on behalf of his clients. Mr. Chapman would further testify that he administered the oath, or administered an oath to the defendant, William Wright, upon Mr. Wright's entering the Grand Jury Room. The oath that he administered was as follows: "Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?" And to which the defendant,

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Mr. Wright, replied, "I do."

Your Honor, that constitutes the stipulation.

THE COURT: Is it so stipulated?

MR. SARGENT: It is so stipulated.

THE COURT: Members of the jury, you may treat a stipulation of fact of this kind with the same force and effect as if Mr. Chapman had been called to the stand and had testified to the same effect as what is being stipulated. And this is a permissible procedure which is allowed principally to save time.

All right. Thank you very much. Mr. Chapman doesn't need to be brought in.

You can call the next witness.

W A L T E R J. L O H R, III,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Mr. Lohr, where are you employed?

A Allied Claim Services.

Q What is Allied Claim Services?

A We are insurance adjusters.

Q How long have you been with Allied Claim Services?

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A Five years.

Q What do insurance adjusters do, particularly Allied Claim Services?

A We investigate the claims and negotiate settlements.

Q And on whose behalf do you do this?

A Insurance companies.

Q Are you an adjuster?

A Yes, I am.

Q What are your general duties as an adjuster?

A To investigate cases and make decisions on liabilities and so forth.

THE COURT: Are you licensed to do this particular type of work, or doesn't it require a license?

A I have a license.

THE COURT: You have a license from the State of New York to be an insurance adjuster?

A Right.

Q Were you employed by Allied Claim Services in 1972?

A Yes.

Q To what office were you assigned then?

A The Buffalo Office.

Q During your employment as an insurance adjuster, have you ever done any work for Volkswagen Insurance Company?

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A In the Buffalo Office, I did.

Q Have you ever had occasion to work as an adjuster on a claim filed on behalf of an individual named William Wright?

A Yes, I did.

Q Mr. Lohr, I show you what has been marked as Government's Exhibit 6. Can you identify that Exhibit?

A It looks like our claim file.

Q When you say "our claim file," you mean a file of Allied Claim Services, Inc.?

A Yes.

Q Have you seen this file within the last several days?

A In your office I did.

Q What did you do with the file?

A I reviewed it.

Q What does that file represent?

A It represents everything that we have done in the case.

Q What particular case is this?

A This case where our insured was a Victoria Hollinger, and there were two claimants, Marvin and Wright.

Q Could you state the full names, please?

A Richard Marvin and William Wright.

Q What is the file number?

A 2-A-23119.

Q What kind of documents or papers are in that Exhibit?

A Well, there are time sheets, these yellow sheets, and there

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are memos and letters and carbon copies of letters.

Q Does the file that you have in your hand, Government's Exhibit 6, represent the Allied Claim Services' entire file regarding this particular automobile accident claim?

A Yes, it does.

Q Were the documents in this file prepared in the ordinary course of the insurance company's or adjuster's business?

A Yes.

Q Was it the ordinary course of your business to prepare the documents in the form and the manner that they have been prepared in the file?

A Yes.

Q Were all the documents specified in that file prepared at the time certain action was taken with regard to the file?

A Yes.

THE COURT: Is there a showing that this file was in possession of the Grand Jury at the time of May 20th, 1975, or do you know, Mr. Lohr, where the file was on May 20th, 1975?

A I don't know where it was.

MR. SARGENT: Your Honor, we have had the opportunity to review the file. I believe it was yesterday, and at this point we have no objection.

THE COURT: You have no objection to

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the file?

MR. SARGENT: No.

THE COURT: Is it being offered?

MR. BURNS: Not quite at this moment, Your Honor. There are some other matters that I don't think are resolved.

THE COURT: Is there anything more to do with Mr. Lohr?

MR. BURNS: Yes.

Your Honor, I do now offer in evidence Government's Exhibit 6.

MR. SARGENT: We have no objection.

THE COURT: It is received.

(Government's Exhibit 6 marked in evidence.)

Q Mr. Lohr, would you please look at Government's Exhibit 6, please, and referring to that file, can you tell me when this claim was referred to Allied Claim Services for adjusting?

A May 22nd, 1972.

Q Was it assigned to you?

A Yes.

Q And does the file indicate that you communicated with anybody on William Wright's behalf?

A He had an attorney, and we knew this from the outside.

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Q What was the attorney's name?

A Kevin Brinkworth.

Q I notice there are a number of gold sheets of paper in this Exhibit. Can you describe what they are?

A These are time sheets. Every time we make a phone call or go some place or do anything in the file, we record it on the time sheet.

Q Is every action that you took in regard to this file included on one of these time sheets?

A Yes.

THE COURT: As I understand, Mr. Lohr, is it true, if you know, that if a claimant has an attorney, you are not permitted to talk to the claimant yourself?

A That is true.

THE COURT: You can't visit Mr. Wright or telephone or anything like that?

A No.

THE COURT: Because of legal ethics?

A Right.

THE COURT: And you never did talk to Mr. Wright?

A No.

Q Were all of your dealings regarding this case on Mr. Wright's behalf through his attorney, Kevin Brinkworth?

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A Right.

Q After you received the file, was any material furnished to you by Mr. Whitworth, either orally or in writing, as to any injuries or any lost time that Mr. Wright had suffered or lost because of the automobile accident?

A Yes.

Q Could you refer to the file and tell us when the information was relayed to the insurance company?

A Another adjusting firm handled it initially, and when we first got this file, our instructions were first of all to contact our insured, get a statement from her, and then negotiate with the attorney who represented both of these claimants.

Q You received some documents from this other insurance company?

A Yes, photographs of both vehicles and an appraisal on our insured's vehicle and their report to the company.

Q And they are contained in this file?

A Yes.

Q And at some point did you begin your investigation into this claim?

A Yes. I got a statement from our insured. I went to the scene of the accident.

Q And what was the insured's name?

A Victoria Hollinger. I took a statement from her and made

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a diagram of the scene of the accident. Then I started trying to contact the attorney. On June 1st, 1972, I called him and left a message. The next day, on June 2nd, I called him and found that he was in conference and left another message.

Q This was in 1972?

A Yes, and on June 2nd when I did call and leave a message, and the secretary said, "They are awaiting the doctor's report." Then I did some work trying to find out whether there was an emergency call that these two men were apparently responding to at the time of the accident, and there is a phone message here on one of these pink slips, a phone call to our office, while I wasn't there, from Mr. Brinkworth, and he said, "Please call him tomorrow afternoon."

Then we got a first report off to Volkswagen Insurance Company.

Q Were you required to make periodic reports to the insurance company?

A Yes, within a reasonable period of time after the assignment, you know, two weeks or so you should get a first report off to him, as much information as you can.

Q Was there any further contact with Mr. Brinkworth after the last one you just mentioned?

A Well, our first report is dated June 8, 1972. On June 13th

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I called Mr. Brinkworth and had a very lengthy conversation with him. There are two time sheets here.

Q Did he say anything to you at that time regarding the claim on behalf of Mr. Wright?

A He did. He told me that he had lost some time and he mentioned a rather large --

MR. SARGENT: Your Honor, is he testifying to a phone conversation?

THE WITNESS: Yes.

MR. SARGENT: Is that on the sheet?

A Yes.

MR. SARGENT: What Mr. Brinkworth told you is on that sheet?

A Some notes of the conversation, yes, are on the sheet.

MR. SARGENT: Are you reading from those notes?

A Yes.

THE COURT: I will permit the testimony as to the fact of this conversation; however, the jury is cautioned that there is no evidence that Mr. Wright was a party to any such conversation. This is a conversation between Brinkworth and the witness or somebody in the witness' office.

Go ahead.

THE WITNESS: He mentioned some time

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off from work because of the accident.

Q By Mr. Wright?

A Yes.

Q Did he mention any figure as to time off, amounts or time?

A There is a figure here of \$2,021.32.

And then we had discussions about the other claimant, Mr. Marvin. And then there was mention here of a bill from Millard Fillmore Hospital, \$65.49 for X-rays of the skull and cervical spine.

Q The bill on whose behalf, or rather for whom?

A Mr. Wright. And then there is a mention here of Dr. Mernan's diagnosis. That is the question I would ask him, you know, what the diagnosis on the medical report was. And it says, "Dr. Mernan -- strain and sprain, cervical spine, lumbosacral spine, contusion of chest."

And it says, "City of Buffalo has a lien."

These are just notes you take when you call and try to get as much information as you can.

Q Was any demand made at that time?

A There is a figure down here of \$2,400, and you know, when you are taking notes from a conversation, you just try to scratch down as much as you can. Maybe that is the figure they asked at that time.

Q Was there any communication after that time between your company and Brinkworth relating to the Wright claim?

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A Yes. There was a lot of correspondence back and forth here.

Q I'm talking between Mr. Brinkworth and your office?

A Yes. There were several more phone calls back and forth.

Q And during these phone calls did Mr. Brinkworth give you any additional information regarding the claim?

A Eventually, he did.

Q Let's take it chronologically if we can. As far as the time you had contact with Mr. Brinkworth, could you relate what contacts you had with him and what was discussed?

A I see here on June 27th, still in 1972, he called me and we had a discussion, and I asked him to send me all the reports and his notice of lien, and he said that he would. Then I followed up with the letter to him dated July 3rd, 1972, where I reiterated my requests for these bills and medical reports.

Q Were any reports forthcoming?

A There is a memo here from Mr. Brinkworth that is dated July 19th, and he attached some medical reports and a bill, a couple of bills.

Q I'm now asking questions regarding Mr. Wright.

A Yes. In his memo regarding William Wright, he says, "John P. Mernan, M. D., report/bill \$225. Millard Fillmore Hospital X-rays \$65.49. Police Department lost time and wage information."

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THE COURT: Is there a total for special damages for Mr. Wright in your file?

A At this point the only totaling I did myself here. My supervisors did \$290.49 in medical specials, and we have the figure in here for lost earnings of \$218.52.

Q So as of July, 1972, those were the total specials you had regarding Mr. Wright?

A Yes.

THE COURT: Excuse me a moment. Do you have a rule of thumb as to an area of settlement of a claim for such an injury with special damages in that amount?

A At that time my supervisor was telling me it is roughly three times the specials should be the area you are talking about for settlement.

THE COURT: And how much would that be?

A Those specials totaled at that time \$509.01, so that the case would probably have been evaluated at that time at about fifteen hundred dollars.

THE COURT: Go ahead, sir.

Q Now you referred to attachments to this letter, or at least you read Mr. Brinkworth's note which there was some reference to attachments. Is there a medical bill from Dr. Mernan that was included with that letter regarding William Wright?

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A Yes. There was a bill for \$225.

Q In what form was the bill?

A Well, it wasn't dated. It is just typewritten here.

Q Was there a medical report submitted?

A I think there was, yes, which gives the nature and extent of injuries, present condition, any permanency --

Q Would you read the medical report, please?

A "I first examined and treated Mr. Wright in my office on January 26, 1972 --

THE COURT: It is already in evidence, isn't it?

MR. BURNS: Yes, Your Honor.

THE COURT: It could be read any time during the trial.

All right, I will let him read it.

THE WITNESS: (Reading): "I first examined and treated Mr. Wright in my office on January 26, 1972, for injuries he sustained in an auto accident on the above date. At the time of examination the following injuries were noted: (1) Sprain and strain of the cervical spine; (2) Sprain and strain of the lumbar spine; (3) Contusion of the upper left chest cage. Mr. Wright complained of headaches, pain, spasm and tenderness of the neck and upper left

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chest cage and low back. He received physical therapy in the form of cervical traction, infrared radiation, shortwave diathermy, massage and progressive therapeutic exercises.

"Present Condition: Mr. Wright improved considerably with this mode of therapy, and his present condition is good. His headaches diminished along with the pain in the other areas."

There is a question on this form, which reads as follows:

"Which of the above injuries, in your opinion, are permanent?"

And the answer is as follows:

"None; however the neck and back may be troublesome for weeks to come."

There is another question which reads:

"Remarks or Suggestions:

"None."

Another question reads as follows:

"Have X-rays been taken?"

"Yes."

"If so, by whom?"

"Millard Fillmore Hospital."

"Date of X-rays."

"February 8, 1972."

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"What do X-rays show?"

"X-rays of the skull and cervical spine reveal no fracture line or abnormality.

"Was patient confined to the hospital?"

"No.

"Were there any consultants?"

"No.

"Give previous medical or surgical history if related to accident?"

And there is dashes, meaning "None,"

I guess.

There is a question which reads:

"Amount of your bill to date.

"\$225.00.

"Estimate of your total bill.

"\$225.00.

"When will the patient be able to resume usual work?"

"One to two weeks.

"Period of partial disability?" And there are three dashes.

"Period of total disability?" And there are three dashes.

"Are all of the foregoing injuries and disabilities related to the accident of

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the above date?

"Yes."

And it is signed by "John P. Mernan,
June 20, 1972."

DIRECT EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Lehr, you referred earlier to a lost wage statement.
Do you also find that in the file relating to Mr. Wright?

A There is a letter, and it looks like stationery from the
City of Buffalo. It says, "Re: William G. Wright --
Injured on Duty 1-24-72," and for "lost time" it has
"1-24-72 to 2-1-72. Eight days at \$27.3151 per day."
And the figure is extended of \$218.52.

There was another question on this form, which reads,
"Medical bills," and the answer below that is "None to
date."

Q What did you do after these medical reports --

MR. SARGENT: Excuse me, Your Honor,
but I just want at this point to interject
something. That lost wage statement that he
just read was an erroneous statement.

MR. BURNS: I think this is argument.

THE COURT: This is not a proper inter-
jection. He is reading from a document which
is in evidence. You will have a chance to

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cross-examine him later on, and as I understand, the wage statement was not signed by Mr. Wright. Isn't that so?

MR. BURNS: That's correct.

MR. SARGENT: But Mr. Burns knows that at a later date --

THE COURT: Don't argue the issue in front of the jury. You will have your chance in a moment. Your turn will come.

I don't see much purpose in reading any more from this file unless it is something that the jury can reasonably infer that it was either signed by Mr. Wright or passed through him -- it is in evidence. It shows it is in existence. I think you should go on to something else.

Q Mr. Lohr, what did your company do after receiving these reports from Mr. Brinkworth?

A Well, we sent them out to the insurance company.

Q After the insurance company received them, what other action was taken?

A We got a reply from the insurance company.

MR. SARGENT: I'm going to object to this, Your Honor. I don't see how it is relevant.

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THE COURT: That particular answer I will allow to stand. He can testify as to the procedures followed in processing this claim up to and including May 20th, 1975, because I am receiving that on the issue of materiality. But as I understand it, nothing that was done in this file is shown or contended to be the action other than Mernan and Brinkworth, isn't that so, Mr. Burns?

MR. BURNS: I would say this file only reflects activities between Mr. Lohr, the Volkswagen Insurance Company and Mr. Brinkworth, yes.

THE COURT: And Mernan?

MR. SARGENT: Yes.

MR. BURNS: Well, no.

THE COURT: Isn't there a bill in there from Dr. Mernan?

MR. SARGENT: Yes.

MR. BURNS: But I mean it is together with a letter from Mr. Brinkworth.

THE COURT: Nothing from Mr. Wright?

MR. BURNS: Yes, Your Honor.

MR. SARGENT: At this point he is asking him to read a communication from this

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gentleman.

MR. BURNS: No, I'm not.

THE COURT: He didn't ask him that.
If he did, I will sustain your objection.

MR. SARGENT: Okay. Thank you, Your
Honor.

Q What happened after you sent these medical reports and
lost wage reports to your insurance company?

A The insurance company wrote back to us and said that they
wanted itemized bills.

Q For Mr. Wright's injuries?

A For Mr. Wright's injuries.

Q What did you do after receiving that request from the
insurance company?

A Also we had asked in our communication with the insurance
company for authority to try to settle the cases.

THE COURT: This is all prior to
May 20th, 1975, that you are telling about?

A Right.

THE COURT: Go ahead.

THE WITNESS: And the insurance com-
pany wrote back and thought we had evaluated
it too high. And the man we were reporting to
suggested that what we felt it was worth was
twice as much as what he felt it was worth.

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Q Do you have any further communications with Mr. Brinkworth after receiving this request from the insurance company?

A Yes.

Q When was that?

A August 14th I called Mr. Brinkworth.

THE COURT: What year?

A 1972, and I offered what the insurance company told us to offer, and he laughed. I wrote that down. And I told him they wanted itemized bills, hospital records, medical reports on both injured parties. We had two claimants in this case. On the 26th of August, he called while I wasn't in the office.

Q Mr. Brinkworth?

A Yes, Mr. Brinkworth, and he wanted me to call him back. On the 22nd of August I called him back. He told me that he sent what we wanted. I see here that on the 16th of August before those conversations, we had sent a Speed Memo to Mr. Brinkworth confirming that we wanted itemized bills and medical reports.

Q Subsequent to that letter, did you, in fact, receive some more itemized reports?

A On the 22nd of August we received a memo from Mr. Brinkworth where it says, "Enclosed herein you will find two itemized bills for the above claimants. I trust you have copies of all the other specials as forwarded to you

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in my letter of July 19, 1972.

"I shall await hearing from you."

Q After receiving some more itemizations, was your company satisfied?

A No.

Q What was the next step taken in connection with the case?

A On August 29th, '72, I called the attorney again.

Q Mr. Brinkworth?

A Yes. He wasn't in, but I left a message to his office that we also wanted the hospital records. On the 30th of August we wrote another Speed Memo. We asked him about some discrepancies on one of the medical bills. We also requested the hospital records again, or authorization so that we could get the hospital records.

On September 5th, Mr. Brinkworth called, and he told me that he would send me a letter explaining the discrepancy in the bill of Dr. Naples. He said that Dr. Mernan did not bill the City as Dr. Naples did, and he said they did not go to the hospital.

THE COURT: He said who did not go to the hospital?

A Marvin and Wright. On September 8th, 1972, we got a letter from Mr. Brinkworth, which reads as follows:

"Enclosed herewith please find copies of letters pertaining to the above-captioned claim. May I please hear

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from you upon receipt of same."

Q Do you know what enclosures he sent at that time?

A They are not in the file here with the letter, so I really don't remember which is which.

THE COURT: Did you at any time receive
an authorization for hospital records?

A I don't recall receiving one. On the 20th of September I got a phone call from Mr. Brinkworth, and we were primarily discussing the lien by the City of Buffalo for the lost wages.

Q Did you make any other requests after that date for some other information regarding Dr. Mernan's bill or lost wage statement for Mr. Wright?

A I believe so. We wrote to our insurance company again on the 26th of September and sent them what Mr. Brinkworth had given us. We asked for further instructions.

On the 3rd of October, Mr. Brinkworth called, and I told him I hadn't heard anything from the insurance company as yet.

On the 10th of October he called me again, and he said he wanted an answer, and I again told him I didn't have one at that time.

Then I called Mr. George Nowadiy, a Police administrator for the City of Buffalo, about the discrepancy here in the lost wages.

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Q What discrepancy was there in the file regarding lost wages?

A I believe further on in the file here there is different liens or lost wage letters from the City for different amounts.

Q Relating to whom?

A I would have to review that. There were two here, again, and I would have to look at it to see.

Q I believe you testified about one lost wage statement regarding Mr. Wright. Is there a second lost wage statement in this file regarding Mr. Wright?

A Yes, there is a letter dated October 16, 1972, on the letterhead of the City of Buffalo. This is a carbon of the letter.

THE COURT: As soon as you come to a convenient stopping place, I will break for the noon recess.

Q And what does this communicate?

A It says: "Re: William G. Wright -- Injured on Duty 1-24-72."

It says, "Lost time," and below that the answer is "No lost time."

And then it says, "Medical bills." And below that the answer is "None."

And there is a note on the bottom which reads:

Conference in Robing Room.

"This replaces any and all past correspondence from this office concerning above officer. Previous letters stating 'lost time' were in error.

"Very truly yours -- George Nowadly."

MR. BURNS: This would be a good point to break for the noon recess, Your Honor.

THE COURT: Members of the jury, you are excused for lunch. Don't discuss the case and please keep an open mind, and we will resume at one thirty.

(The jury left the courtroom.)

(Recess.)

THE COURT: I see that Mr. Doyle is now in the courtroom.

MR. DOYLE: Yes, Your Honor. And Mr. Jay is also here. Speaking on behalf of both of us, may we take this matter up in chambers, on the record, with the Court's permission?

THE COURT: Yes, I will hear this matter in chambers.

(In the robing room; the following counsel present: Theodore J. Burns; Nicholas J. Sargent; Vincent E. Doyle, Jr.; Mark Mahoney; and David G. Jay.)

THE COURT: Mr. Doyle, you are the

Conference in Robing Room.

attorney for Mr. Kevin Brinkworth?

MR. DOYLE: That's right, and this is Mr. Mark Mahoney, who is from my office, and David Jay appears on behalf of John Mernan.

THE COURT: Go ahead.

MR. DOYLE: My concern, Your Honor, is very simply as to the scope, what might be ruled permissible examination of Mr. Brinkworth. I talked to Mr. Burns earlier on the phone regarding this, and he cannot assure me that an attempt would not be made to examine Mr. Brinkworth concerning matters which are presently awaiting disposition against Mr. Brinkworth in the three Indictments pending against him. Because of that, and although Mr. Brinkworth has expressed a willingness to testify in this matter, I would certainly have to caution him that if the Court permitted questioning beyond his knowledge of the Wright matter, which is according to him rather limited, that if he would be in a position where I would have to advise him to refuse to answer on the grounds of possible self-incrimination in light of the status of the other three Indictments --

THE COURT: I think I should ask Mr.

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Burns to state on the record what information is sought to be elicited on the direct testimony of Mr. Brinkworth, because the scope of the cross examination would be limited to the area covered on direct examination. And I would say certainly that it could not be brought out if Mr. Brinkworth is presently under Indictment.

There is an additional minor problem in this case. The issue of materiality is being litigated by the defendant, which he has a perfect right to do, and the Government has been taking most of the morning attempting to prove materiality. But I think you ought to tell me, Mr. Burns, on the record now, what you would elicit from Mr. Brinkworth if he appeared and indicated to you a willingness to answer questions.

MR. BURNS: I would ask him questions about the dates, the particular dates and times that he saw Mr. Wright and spoke with Mr. Wright regarding this case or regarding any other matter. I would ask him questions regarding the manner in which certain documents were prepared that are contained in Government's Exhibit 6, which is the insurance file, and

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including the Dr. Mernan bill, and I believe there are three separate Mernan bills and reports in there. I would ask him questions also about the manner in which these lost wage statements were prepared. I would ask him questions about discussions he had with Mr. Wright as to the settlement of the automobile accident claim. I would ask him questions about the contacts he had with Mr. Wright immediately prior to Mr. Wright's testimony before the Grand Jury on May 20th, 1975. And also about his knowledge that he was, in fact, at that time a subject of the investigation before the Federal Grand Jury.

MR. DOYLE: Who is "he"?

MR. BURNS: Mr. Brinkworth.

MR. DOYLE: That Mr. Brinkworth was a subject of the Grand Jury investigation?

MR. BURNS: That's right.

THE COURT: Are you casting Brinkworth as an aider and abettor of Wright's false declarations? Is that the suggestion here that you are going to elicit from Brinkworth, that he told Wright how to answer?

MR. SARGENT: Your Honor, let me interject on that. Quite frankly, we would

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like to have Brinkworth testify as to that.

And if he isn't going to call him as a witness --

THE COURT: All I am trying to resolve now is whether Brinkworth is unavailable as a witness.

MR. SARGENT: Right, I know, Your Honor.

THE COURT: And as I understand it, Mr. Doyle has told me that whether or not he will assert his privilege against self-incrimination depends on the scope of the direct examination and cross examination.

MR. SARGENT: Certainly, without any doubt.

THE COURT: It is proper for the Government to tell me what he would elicit on direct examination, and I would limit the cross examination to the scope of the direct examination.

Now this whole question came up when they gave me a pretrial memorandum, and you said that Hernan and Brinkworth would be called and were expected to exercise their privilege against self-incrimination, and I told Mr. Burns I wouldn't allow them to do that in front of the jury.

Conference in Robing Room.

If you are going to call them as defendant witnesses, then we are in the same posture.

MR. SARGENT: I understand that.

THE COURT: Then you would have to tell Mr. Doyle, in my opinion, what you would intend to elicit, and the Government's cross examination would be limited to what is brought out on direct examination.

MR. SARGENT: I want to make sure that it is known that we would like to question Mr. Brinkworth about his conversation with our client on the day prior to his testimony before the Grand Jury.

MR. DOYLE: Can I ask one further question? Is it your client's position, Mr. Sargent, that he would waive the privilege of attorney-client because we have that additional privilege that Mr. Brinkworth might be in a position, or might have to invoke that privilege absent a waiver by the defendant?

THE COURT: He certainly wouldn't -- there is no problem with that if the defendant calls him as a witness.

MR. DOYLE: That is true. I meant if

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the Government calls Mr. Brinkworth, it goes without saying that Mr. Brinkworth could not and would not testify absent a waiver of the privilege --

THE COURT: There is no question about that, but once he asserts his privilege, either it will be waived by the defendant, or the Court will rule on it, and Mr. Brinkworth is not imperiled in any way if the Court tells Mr. Brinkworth to answer the questions.

MR. DOYLE: Right.

THE COURT: And overrules any attorney-client privilege, to has to answer. It is not his privilege. It is the privilege of Mr. Wright.

MR. SARGENT: It does seem to me, and we do have this in the Grand Jury testimony, that a conversation did take place. Our client stated that before the Grand Jury.

THE COURT: I think you have told Mr. Doyle what each of you has in mind, and I think he is in a position to confer with his client about it and exercise judgment and tell all of us. And as I understand it, if Mr. Doyle says he will exercise the privilege, you don't

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require me to put Brinkworth under oath and ask him that?

MR. BURNS: I don't, Your Honor.

I said this twice off the record, and I want to go on the record with this, too. I did at the beginning of the trial advise the Court that I intended to call these two witnesses. I believed they probably would not testify on the basis of their Fifth Amendment rights and that it is my desire that this matter be resolved in the manner we are doing, and that is in chambers, with all the attorneys, not putting Mr. Brinkworth or Dr. Mernan on the witness stand if their lawyers advise us they will assert the privilege.

THE COURT: You take the same position, Mr. Sargent?

MR. SARGENT: I take the same position but merely add our scope of examination is not as extensive as some of the questions he indicated, so, therefore, it would be our position that we would desire to call him merely to elicit his conversation with our client.

THE COURT: All right.

Mr. Doyle, do you understand enough so that you can talk to your client?

Conference in Robing Room.

MR. DOYLE: Right. I'm going to meet him right now at lunch, Your Honor.

THE COURT: Mr. Jay, how about you?

MR. JAY: I discussed this with my client, and he faces some sixty-eight Counts in those Indictments. This particular case is not in those Indictments. He is not going to testify about anything whatsoever. He will assert his privilege, period.

THE COURT: Do you all accept Mr. Jay's representation to that effect, do you, as far as Dr. Mernan is concerned?

MR. BURNS: Yes, Your Honor.

MR. SARGENT: Yes, we do.

THE COURT: I find that there is no necessity for holding an evidentiary hearing so far as concerns Dr. Mernan. I find that Dr. Mernan is unavailable for the purposes of this trial.

(A luncheon recess was taken at
12:50 p.m.)

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Conference in Robing Room.

Buffalo, New York

Friday, October 22, 1976

1:30 p.m.

- - -

(In the robing room; the following
counsel present: Theodore J. Burns;
Nicholas J. Sargent; Vincent E. Doyle, Jr.;
Mark Mahoney; and David G. Jay.)

THE COURT: What is the status of the
matter as far as Mr. Brinkworth's subpoena is
concerned?

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MR. DOYLE: He was subpoenaed this
morning, and I had an opportunity to talk to him
by phone over the lunch hour, and based upon my
advice, with an awareness of the potential for
direct as well as cross, the probability of
declaring him a hostile witness, and cross
examining him under those circumstances as a
hostile witness, if he doesn't support a theory
of one side or the other, I have advised him
that in my judgment at that point he should re-
fuse to testify on the grounds that any testi-
mony that he may give could conceivably tend to
incriminate him in the future troubles that he
faces with three Indictments, and under those

W. J. Lohr, III, for Government, Direct.

circumstances he has agreed to abide by my advice, and he wishes me to convey to the Court that he would follow my advice and invoke his privilege under the Fifth Amendment, if called.

THE COURT: Is it so stipulated?

MR. BURNS: Yes, it is so stipulated.

MR. SARGENT: It is so stipulated.

THE COURT: In that case I find Mr. Brinkworth is also unavailable as a witness and that the exercise of this privilege would be reasonable and proper, and I will vacate his subpoena. Also, the same applies to Dr. Mernan.

(Trial resumed; jury present.)

THE COURT: Good afternoon, members of the jury.

You may resume.

W A L T E R J. L O H R, III,
called as a witness by the Government, being previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Lohr, when we took the luncheon recess, I believe you testified about conversations reflected in these records between you and Mr. Brinkworth, specifically regarding the lost wage statement regarding Mr. Wright and the City

W. J. Lohr, III, for Government, Direct.
of Buffalo. Did you have any additional conversations with Mr. Brinkworth during the month of October after you received the Dr. Mernan bill and after you received the second lost wage statement?

THE COURT: That can be answered

"yes" or "no."

A From looking at the file here, yes, I do.

Q When did you have your next conversation with him?

A It looks like October 24th.

Mr. Brinkworth called, and I made an offer to him on both cases. He indicated --

Q What was your offer on the Wright case?

A Nothing. I didn't make an offer on the Wright case. I made an offer on the Marvin case, and nothing on the Wright case.

THE COURT: You told him that the Wright case was an "okay case"?

A Yes, sir.

THE COURT: You mean "correct"?

A Correct.

Q Did you give him your reasons?

THE COURT: That can be answered

"yes" or "no," if he gave his reasons.

A I must have. It is not reflected in my notes here in the conversation.

W. J. Lohr, III, for Government, Direct.

Q Are you able to state at this date what your reasons were?

MR. SARGENT: I object.

THE COURT: Sustained.

Q Did you have additional conversations with Mr. Brinkworth after the one you just related?

A Then I wrote to the insurance company again. Then we received one other letter from the insurance company that suggested that we recontact Mr. Brinkworth and further explore settlement offers to see what he would be reasonably interested in.

Q Did you, in fact, contact Mr. Brinkworth?

A On December 5th, I called and left a message for him, and very shortly after that, he called back and we argued the liability aspects of the case. And he agreed that there were some questions in that area, and he made new demands on both cases.

Q What was the demand in the Wright case?

A Twelve hundred dollars.

Q Did you make any response to that?

A I said that I would take it up further with the insurance company.

MR. SARGENT: Your Honor, at this point I think that this inquiry has gone far enough as far as this proceeding here to date.

THE COURT: May I discuss it with

Conference at Side Bar.
counsel at the side bar.

(At the side bar.)

THE COURT: This line of inquiry is only for two purposes; one is materiality and the other is that this file does contain some authenticated record from the City of Buffalo as to how much time he lost from work. At least on their face, it was authentic and kept in the regular course of business and probably admissible. In addition, no objection was taken to the file, but I must observe to both of you that whatever this witness did is hearsay and not binding as to Wright, because this witness, as he admitted in his direct testimony, is not authorized to speak with Mr. Wright. He spoke only with Brinkworth.

MR. SARGENT: The further we go with inquiry, it just seems to me it becomes more and more, to a certain extent, prejudicial if, in fact, it has probative value.

THE COURT: The only thing that can be shown from that line of inquiry, aside from authentication, records from the City of Buffalo or from the hospital that may be in there, is that certain information was in the

Conference at Side Bar.

possession of the Grand Jury -- but any conversations he had with Brinkworth are hearsay as to him, hearsay as to Mr. Wright.

MR. BURNS: I agree. We are almost finished with this line of inquiry.

THE COURT: I think you should be completely finished.

MR. BURNS: I think also the documents in the file when matched up with one another, the accident report, which is in the file, shows no injuries by Mr. Wright, contrasted with other medical evidence of questionable nature -- I think under the Sweig case, a Second Circuit case, the Government may introduce proof of a motive --

THE COURT: But you see, motive has to be Mr. Wright's motive.

MR. BURNS: I want to try to establish the fraud, or possible fraud, of the questionable documents in the insurance file.

THE COURT: Unless you can connect it up, it is not binding on Mr. Wright.

MR. BURNS: I agree. It should be connected up.

MR. SARGENT: You are discussing nego-

Conference at Side Bar.

tiations of the settlement of the case with Brinkworth.

MR. BURNS: And I am discussing documents that were received.

THE COURT: What more is there to do with this file?

MR. BURNS: There is one more Mernan bill and also one other item, and that is a comment reflected in the file that he presented an offer to his clients and that they are bullheaded.

THE COURT: I won't take that. That is hearsay.

MR. BURNS: I think it is admissible under the business record rule.

MR. SARGENT: It is that document relating to a discussion with Mr. Lohr that Mr. Brinkworth's clients are bullheaded that we are objecting to as being part of the file.

THE COURT: I will not take that into the record at this time. I will discuss it with you later. If it can be connected up or brought home to Mr. Wright and made binding upon him, then it will become admissible, but not now.

MR. BURNS: Your Honor, after getting

W. J. Lohr, III, for Government, Direct.

him to identify the last Mernan bill, then I would conclude by establishing that this claim was never settled.

THE COURT: You can bring that out.

MR. BURNS: And then I will be finished.

DIRECT EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Lohr, did you at some time, or did Allied Claim Services at some time, receive a third Dr. Mernan bill?

A Yes.

Q And in what form was that bill?

A I believe we requested a bill on the doctor's own letter-head.

Q Were you eventually provided with this particular bill?

A Yes.

Q After receiving that and receiving the other information you testified about, was the claim, in fact, settled?

A No.

Q Was the claim ever put in suit, that is, was a lawsuit started?

A That was transferred from the Buffalo Office to the Niagara Falls Office right at the beginning of '73. And it was re-assigned to someone else in the Buffalo Office, so I really didn't know what happened to it until I reviewed this.

W. J. Lohr, III, for Government, Cross.

Q But after you had reviewed this file, this insurance file --

THE COURT: Can you tell from the file
whether a lawsuit was ever brought by Mr. Wright?

A No, there is no evidence of that.

Q Was there ever any payment made out on the Wright claim
to Mr. Wright or to Mr. Brinkworth or anyone on Mr. Wright's
behalf?

A No.

MR. BURNS: Thank you. I have no further
questions.

THE COURT: You may cross-examine.

CROSS EXAMINATION

BY MR. SARGENT:

Q Mr. Lohr, in your prior testimony, you stated that you investigated whether this accident resulted from an emergency call, emergency police call, and I wonder if you might tell me whether that is a fact?

A Well, as I recall, I went over to Precinct 6, which is fairly close to us.

THE COURT: Can't you just tell him
whether you know or not? Did you know, or did
your investigation show whether this vehicle was
en route to an emergency call?

A As I recall, yes, sir.

THE COURT: Is that what you asked?

W. J. Lohr, III, for Government, Cross.

A As I recall, there was some kind of a general alarm for a burglary or something.

THE COURT: A burglary in progress?

A Something like that. I do not recall.

Q According to the testimony, there were three bills from Dr. Mernan, is that correct?

A That is right. There are three.

Q I wonder if you might find those two bills from that file.

(Pause in the proceedings.)

A Okay. I have got all three.

Q I wonder if you would read to the jury what is the address that those bills were sent to?

A The first one is actually on the medical report.

Q Is an address indicated where that report was sent?

A Not on the actual report itself.

Q Is there something attached to it that would indicate an address?

A Well, it came with the memo of July 19, 1972, from Mr. Brinkworth to our offices.

Q What is the address on the other two Mernan bills?

A Mr. Kevin Brinkworth, 645 Ellicott Square Building, Buffalo, New York.

Q What is the address indicated on the X-ray report as to where that X-ray report was sent?

A The X-ray report was also on this medical report from

W. J. Lohr, III, for Government, Cross.

Mernan, the thing I was reading about the X-rays.

Q So the address on the X-ray report was sent from Brinkworth, is that correct?

A Yes.

Q Turn now to the discrepancy in the lost wages, and there are two letters, I believe, reflecting what the lost wages were. Could you possibly bring those before you?

A I have the first one.

Q What is that letter coming from? In other words, whose signature is on the letter?

A George Nowadly.

Q Who is the letter written to?

A Kevin Brinkworth.

Q And what is that date on the first letter?

A May 1st, 1972.

Q Now would you place before you the October 16th communication relative to the lost wages?

A (Witness complies.)

Q Whose signature is on that letter?

A George Nowadly.

Q Who is the letter addressed to?

A This one is to Mr. Anthony Manguso.

Q Who is Anthony Manguso?

A Corporation Counsel.

THE COURT: Of the City of Buffalo?

W. J. Lohr, III, for Government, Cross.

A Of the City of Buffalo.

Q Would you just quickly read that letter for us?

A "Dear Sir:

"The following is the information requested on the above-named injured member of this department:

"Lost Time: No lost time.

"Medical Bills: None.

"Note: This replaces any and all past correspondence from this office concerning above officer. Previous letters stating lost time were in error.

"Very truly yours -- George Nowadly."

Q Who is the "above-named officer"?

A William G. Wright.

Q I ask you now to turn your attention to a Police Department Accident Report that is in that file, and on the top it says, "Accident Report -- Buffalo Police Department," is that correct?

A Yes.

Q Whose signature is on that report?

A It says, "Report checked by --" And it looks like Floyd J. Ed--something. I can't make it out.

Q Would it be Floyd Edwards?

A It looks like that is what it is.

Q Is there a rank below his name?

A "Captain," I think it is.

B. Gollasch, for Government, Direct.

MR. SARGENT: I have no further questions.

THE COURT: Anything else from this witness, Mr. Burns?

MR. BURNS: No, Your Honor. I have no more questions.

(Witness excused.)

BARBARA GOLLASCH,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Miss Gollasch, where are you employed?

A Millard Fillmore Hospital.

Q What is your position with Millard Fillmore Hospital?

A Corresponding Secretary.

Q Are you in a particular office, a division of the office?

A Medical Records.

Q And what is the function of the Medical Records Division?

A We store all the in-patient and out-patient records.

Q And what kind of records are maintained there?

A In-patient admission, out-patient treatment in the Emergency Room.

Q Do you maintain any records regarding X-rays given by Millard Fillmore Hospital?

B. Gollasch, for Government, Direct.

A Yes.

(Government's Exhibit 12 marked for identification.)

Q Let me show you what has been marked as Government's Exhibit 12. Can you identify that Exhibit?

A It is an out-patient X-ray.

Q Is that a record that is maintained by Millard Fillmore Hospital?

A Yes.

Q An X-ray record?

A Yes.

Q Are these records maintained in the ordinary course of the Millard Fillmore Hospital's business?

A Yes.

Q Is it the ordinary course of business to maintain them, as you described, in your office?

A Yes.

Q And are you appearing today in response to a subpoena which directs Millard Fillmore Hospital to produce X-ray records relating to William Wright?

A Yes.

Q And pursuant to that subpoena, have you produced records as Government's Exhibit 12?

A Yes.

MR. BURNS: At this time, Your Honor.

B. Gollasch, for Government, *Voir Dire*.

I offer in evidence Government's Exhibit 12.

MR. SARGENT: I would like to ask a few questions.

THE COURT: Certainly.

VOIR DIRE EXAMINATION

BY MR. SARGENT:

Q I wonder if you might just tell us whose signature is on there?

A Dr. Sheehan.

Q How do you know that is his signature?

A I am familiar with it from the X-ray reports.

Q And is there any other signature or other notation on there?

A No.

Q Other than the typewriter?

A No.

MR. SARGENT: I have no objection.

THE COURT: Government's Exhibit 12 is received in evidence.

(Government's Exhibit 12 marked in evidence.)

THE COURT: Anything else from this witness?

MR. BURNS: I would like her to explain the forms. I believe the entries that are

B. Gollasch, for Government, Direct.
R. Marvin, for Government, Direct.

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at the top are not necessarily self-explanatory
without some testimony.

THE COURT: Go ahead.

DIRECT EXAMINATION CONTINUED

BY MR. SARGENT:

Q What information is contained at the top of a form?

A The patient's name. He was an out-patient.

Q What is the name of the patient in this form?

A William Wright.

Q And what other information is on there?

A The X-ray was done February 8th, 1972.

Q Is that what that date at the top of the form indicates?

A Right. Then there is a plate number.

Q Is that the 72-4438?

A Yes.

Q What does "OP" stand for?

A Out-patient. And the referring doctor is Dr. John Mernan.

MR. BURNS: I have no further questions.

MR. SARGENT: I have no questions.

(Witness excused.)

R I C H A R D M A R V I N,

called as a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. BURNS:

Q Mr. Marvin, where are you employed?

R. Marvin, for Government, Direct.

A By the Buffalo Police Department.

Q What is your position with the Police Department?

A Police Officer.

Q How long have you been with the Police Department?

A Nine years.

Q Where were you assigned in January of 1972?

A Precinct 6.

Q Here in the City of Buffalo?

A Yes.

Q Were you ever a partner of William Wright?

A On the particular assigned duty?

Q On occasion.

A On occasion.

Q Not regularly?

A No, sir.

Q Were you in the company of William Wright during the evening of January 24, 1972?

A Yes. I would have to state that as pertains to the case, I was.

Q Were you on that day involved in an automobile accident?

A Yes.

Q While you were on duty as a Buffalo patrolman?

A Yes.

R. Marvin, for Government, Direct.

Q Were you in an automobile?

A Yes, sir.

Q Was anyone else in the automobile?

A Yes, sir.

Q Who?

A Police Officer Wright.

Q Who was driving the car?

A Police Officer Wright.

Q What kind of a car was it?

A A police car, a regular police patrol vehicle.

Q What were you doing in the automobile?

A We were on regular patrol duty. Well, do you mean on this evening?

Q Where were you going when you had the accident on the evening of January 24th?

A We were responding to an emergency-type call which necessitates the use of the siren and the red light.

THE COURT: This was a marked car that had a red light on the top of it, was it?

A Yes.

Q Did you actually answer the call?

A No, we never got there.

Q What happened?

A Well, en route to that call, we had an accident.

Q Who was driving the car?

R. Marvin, for Government, Direct.

A Police Officer Wright.

Q Where were you in the car?

A I was on the passenger's side operating the police siren manually.

Q What position are you in when you are operating the siren?

A When you operate it manually, the siren is at the lower portion of the vehicle underneath the dashboard, so I was bent over and operating the siren.

Q In the front seat of the car?

A Yes.

Q And what happened?

A As we were traveling along periodically I looked up, and as we approached one of the intersecting streets, I seen a vehicle had pulled up, and it looked like the vehicle was already stopped. And I bent over again, and as I was bending over and I looked up, I seen the vehicle start to move forward, and just shortly thereafter we had a collision with this particular vehicle.

Q Do you know approximately how fast your automobile was traveling?

A I would only hazard a guess.

Q An estimate?

A I would have to estimate possibly forty miles an hour, between forty and fifty.

Q And what was the other car doing at the moment of impact,

R. Marvin, for Government, Direct.

if you know?

A Well, at the moment of impact, he had just left a side intersection and pulled onto the street we were on.

Q He was traveling? In other words, it was in motion?

A Yes, in motion.

Q What happened at the point of impact as far as you, personally, were concerned?

A As far as I, personally, was concerned, I got shook up pretty bad, and sustained a few bruises.

Q Explain exactly as best you can recall what specifically happened to you at the point of impact? Did you strike something?

A Yes. As I say, I had been bending over, and I seen the car, and thinking it was going to stop, I was still bent over operating the siren, so I was in a kind of a bent-over position.

Q Did you remain that way after the point of impact?

A I don't know what struck. Either I went forward or back, but at that particular moment, I can't recall what it was.

Q What happened immediately after the impact?

A After a few minutes, we gathered our wits and then we got out of the car, and I believe radioed in. And "radioed in" is a routine procedure that we radioed in that we had an accident, and then remained at the scene.

Q What did you do at the scene?

R. Marvin, for Government, Direct.

A We checked, which is routine, to check to see if the occupant of the other car was hurt or anything.

Q Did you also check with Mr. Wright to ask him if he was injured?

A Yes.

Q What did he say?

A Well, it was hard to say at the moment. He didn't know either. You know, I don't know just how much I hurt at that particular time.

Q Is that what he said to you?

A I don't recall what he said, really.

Q Did he say that he was injured in any way, or that he felt uncomfortable in any way?

MR. SARGENT: Isn't this in the scope of the hearsay rule, what he said to him?

THE COURT: Objection is overruled.

A I know we were both shaken up. He might have told me he was shook up, but as I say, there were no visible injuries.

Q Do you recall him making any complaint of injuries to you?

A Not at that particular moment, no, sir.

Q What happened after you say you collected your wits and got out of the car? What did you do?

A We checked the occupant of the other vehicle to make sure she wasn't hurt. And as I say, we had called for our Accident Investigation Unit.

R. Marvin, for Government, Direct.

Q And did you do anything else at the scene?

A No, other than just secure the scene so that no other cars got involved in our particular accident.

Q What happened when you finished up whatever you had to do at the scene?

A Then I believe we went back to the precinct to make out all the necessary paperwork.

Q You mean involving this accident?

A Yes, sir.

Q Did anyone else go back there to the station house with you?

A Myself and Police Officer Wright.

THE COURT: Could this car be driven after the accident?

A I would have to hazard a guess.

THE COURT: What is your best recollection? Do you know whether you drove back in a police car, or did somebody come and get you?

A I believe we went back in the police car, but as I say, I couldn't state for sure.

Q Did anybody else go back to the police station with you?

A I think we had the occupant of the other vehicle. I know we issued a summons.

Q What was the summons for?

A For failure to yield the right of way for an emergency

R. Marvin, for Government, Direct.

vehicle.

Q What happened back at the station house?

A We made our paper work up. I am not sure I completed it, but then I started to feel dizzy and wasn't feeling so good, so I reported off sick to the desk.

Q Did you have any conversation with Mr. Wright back at the station house?

A I'm sure I would have had some conversation with him as pertaining to the accident, but I couldn't recall exactly what it was other than just some of the details, the paper-work he would have to fill out.

Q At the station house, did he make any complaint to you regarding injuries?

A I don't recall, sir.

Q Procedurally, what did you do to go off sick?

A It is just a matter of stating that I wasn't feeling good, or, you know, I was not well. It was just a matter of we would have to go home and then the following morning report to our physician, our own private doctor, or our departmental physician.

THE COURT: Who do you report that you are ill when you are going off duty?

A You report right there at the desk.

THE COURT: To the man on the desk?

A Yes.

R. Marvin, for Government, Direct.

THE COURT: What does he ordinarily do when you report to him that you are going off duty because you are ill?

A He has to make out a departmental form as to the nature of injuries, our doctor, and, of course, time and the date and the communication sent out to the resident precinct in which I live.

THE COURT: This is what you did?

A Yes, sir.

THE COURT: Are you required to live in the City of Buffalo?

A No, sir.

Q Do you know if Mr. Wright reported off sick?

A I beg your pardon?

Q Do you know if Mr. Wright reported off sick?

A I don't recall. I have to say that I don't believe so.

Q Did you leave after you filled out the paperwork and told the Desk Sergeant you were ill?

A Yes.

Q When you left, was Mr. Wright still there?

A As far as I know.

Q Did you seek any medical treatment for your injuries?

A Yes, I did.

Q Who did you see?

A I seen a Dr. Naples.

R. Marvin, for Government, Direct.

Q Had you ever seen Dr. Naples before the treatment --

THE COURT: Can't we stick with Mr.

Wright's case?

Q Were you represented by an attorney in connection with this automobile accident?

A Yes, sir.

Q And when was that?

A That was, I believe, within a day or two after the accident.

Q Who did you see?

A Kevin Brinkworth.

Q Do you know if Mr. Wright ever saw Mr. Brinkworth or contacted Mr. Brinkworth regarding this accident claim?

A Personal knowledge I couldn't say. I think after a period of time it became evident. I don't know exactly when the conversation, or how the conversation took place, but I realized later that we were both represented by the same attorney.

Q Did you know Mr. Brinkworth prior to this?

A I did, yes, sir.

Q Did you discuss with Mr. Wright the fact that you were represented by, or you were being represented by, Mr. Brinkworth?

A Yes.

Q And did you ever have any conversation after the accident

R. Marvin, for Government, Cross.

with Mr. Wright regarding your accident claim and his accident claim?

A Yes. After a period of time when we hadn't heard nothing, we would ask each other if we had heard from the attorney, which would have been Kevin Brinkworth.

Q Did Mr. Wright tell you whether or not he had heard anything from the attorney?

A It was negative answers all the time. Neither one of us had heard.

Q Do you know if Mr. Wright checked on his claim at any point during the period while it was pending?

A This I don't know, sir.

Q Was your accident claim, in fact, ever settled?

A No.

Q Do you know if Mr. Wright's claim was actually settled?

A I don't know that.

MR. BURNS: I have no further questions.

THE COURT: You may cross-examine,

Mr. Sargent.

CROSS EXAMINATION

BY MR. SARGENT:

Q Police Officer Marvin, you are at this time a police officer, is that correct?

A Yes, sir.

Q And do you know, in fact, that I represent the Police

R. Marvin, for Government, Cross.

Benevolent Association, which is the Police Union?

A Yes, sir.

Q And would that in any way affect your ability to give a truthful answer?

A No, sir.

Q There came a time that you appeared before a Grand Jury, is that correct?

A Yes, sir.

Q And do you recall when that was?

A No, sir, not the exact date.

Q Does May 20th, 1975, bring to your attention that that could possibly be the date?

A Well, I would only hazard a guess, but --

THE COURT: Is the date in dispute?

What is the date?

MR. BURNS: May 20th.

THE COURT: Before or after the defendant testified?

MR. BURNS: Immediately before.

THE COURT: Is it so stipulated, Mr. Sargent?

MR. SARGENT: This is already marked as an Exhibit.

THE COURT: What number?

MR. SARGENT: Government's Exhibit 3501

R. Marvin, for Government, Cross.

for identification.

Q I will show you what is marked as Government's Exhibit 3501 and wonder if you could please read to the jury this paragraph (indicating).

THE COURT: Not out loud. Just read it to yourself.

As I understand, it has been stipulated that he testified before the Grand Jury on May 20th, 1975, immediately prior to Mr. Wright going in before the Grand Jury. But this document is not in evidence, Exhibit 3501.

MR. SARGENT: I would like to place this in evidence at this time.

MR. BURNS: I object. I don't see any basis for doing that.

THE COURT: I would have to hear your objection in the absence of the jury. I will sustain the objection at this time, no proper foundation.

If there is anything in that Exhibit which is inconsistent with the testimony which this witness gave on his direct examination, he may be confronted with it. He may be asked about it. If there is anything in there that he did not testify to in his direct examination,

R. Marvin, for Government, Cross.

he may be asked about the subject matter. He may be asked about anything that has relevance to this case.

Q Officer Marvin, when you appeared before the Grand Jury, do you recall if you had brought with you any notes or documents that pertained to this accident?

A No, I did not.

Q When seated before the Grand Jury, do you recall whether Mr. Burns proffered any documents for your recollection?

THE COURT: Is there relevance to this? This is cross examination now. Is it relevant?

You were never charged with anything, were you?

A No, Your Honor.

THE COURT: It is not relevant what Mr. Burns did or said with him.

MR. SARGENT: May I approach the bench, Your Honor.

THE COURT: Members of the jury, we will take a brief recess so I can talk with the attorneys.

(Recess.)

(Jury not present.)

Conference at Side Bar.

THE COURT: Go ahead, Mr. Sargent.

MR. SARGENT: Your Honor, one of the contentions here is that Police Officer Wright, being a trained police officer, would have remembered certain facts about this case and, therefore, since he didn't remember these facts and being trained as a police officer didn't remember these facts, therefore, one must conclude that he was lying about not remembering. It seems to me that when Police Officer Marvin went before the Grand Jury and he answered certain questions that he didn't recall, that he didn't remember, and he wasn't indicted, and there were certain things that he was permitted to recollect and bring to his attention certain aspects about this accident, and we maintain that this fact would permit the jury to realize that possibly this was the reason why he remembered and Police Officer Wright did not.

THE COURT: What was the reason that he remembered?

MR. SARGENT: Because he was given certain documents --

THE COURT: That is irrelevant. You can elicit from this witness, if you wish, al-

Conference at Side Bar.

though it is not within the scope of the direct. You can elicit from him what kind of training is required in the Buffalo City Police Department, if he knows, before a person may be regarded as qualified to make observations, and what special training a man is required to have.

Is your client a patrolman?

MR. SARGENT: Yes.

THE COURT: And that you may elicit from him, but the fact is not relevant what he did or what Mr. Burns did with him is not relevant as to your client's case. Furthermore, the 3500 series of Exhibits are not in evidence and are furnished to you for two basic reasons. One is to permit you to have a reason to impeach or confront a witness who testifies falsely on direct examination or cross examination. Secondly, it is to permit you to refresh his recollection if he said he can't remember. And the third thing, of course, is to inform you as to any exculpatory statement or testimony which that particular Government witness may have given at some prior occasion, and that is all they are here for, basically. They are not in evidence. They can't be read from except for that limited

Conference at Side Bar.

purpose, for purposes of impeachment or showing it to refresh his recollection or as a clue or a lead to give a basis for asking him some other question about the case. Now if you want to cross-examine him on that basis, of course, you may. What they did in this case is not relevant to your client's case, and if you do want to go into the extent of his training to make observations, if he knows, he can answer. If you represent the PBA, you ought to be very well informed what training, if any, they do give. Maybe they don't give any.

MR. SARGENT: I'm certain they don't.

THE COURT: Well, I'm not certain. I suspect that it is very likely a man who passes the Civil Service test that they give him a badge, a pair of handcuffs and a night stick.

MR. SARGENT: I have one other clarification now. There are certain questions in the Grand Jury that, no doubt, relate to this accident, and based on some of the information that was brought out on direct testimony --

THE COURT: You can examine this witness as to the accident. If this witness, in your view, testified falsely on direct examina-

R. Marvin, for Government, Cross.

tion, or inconsistently on his direct examination what he did in the Grand Jury, then and only then you can confront him by asking him, "Do you recall being asked this following question, Page 26, Line 5?" And then read the answer.

MR. SARGENT: Fine, Your Honor.

THE COURT: But in the absence of a reasonable basis for impeachment, you can't use that except for the three purposes I stated to you.

We will be in recess briefly.

(Recess.)

(Jury present.)

CROSS EXAMINATION CONTINUED

BY MR. SARGENT:

Q Officer Marvin, prior to your testimony here this afternoon, did you have the opportunity to refresh your memory as to some of the events you testified to?

A Yes.

Q And how did you go about that?

A That was Wednesday of this week when the District prosecutor asked me to go over my previous testimony in the Grand Jury.

Q Did you do that?

A Yes, sir.

R. Marvin, for Government, Cross.

Q You reviewed on Wednesday your testimony before the Grand Jury?

A Yes, sir.

Q Did you review any other documents?

A No. That was just my testimony before the Grand Jury.

THE COURT: Didn't you bring some notebooks with you when you got on the stand?

A No, sir. These are some books that I was reading while I was waiting.

THE COURT: It has nothing to do with these events?

A No, sir.

Q Prior to your testimony before the Grand Jury, did you have any knowledge as to what your appearance was requested for before the Grand Jury?

A No, not until the day I received this subpoena, and then I noticed my attorney's name on it, so I called to ask him what it was about, and then also I had gotten a call from the prosecuting attorney.

THE COURT: You are talking about your appearance here, or in May of 1975, or today, which?

A No, the appearance when I received the initial subpoena for the Grand Jury.

THE COURT: I think I ruled that area

R. Marvin, for Government, Cross.

is not a proper area for inquiry.

Q You testified today, Officer Marvin, that you went to see a doctor after the accident, is that correct?

A Yes, sir.

Q And did you also testify that you had occasion to visit the police surgeon?

A Yes, sir.

Q Do you recall the police surgeon's name?

A Yes, sir. It is Dr. Thomas J. Murphy.

Q And is he the present police surgeon?

A Yes, sir.

Q And what was the other doctor's name that you testified that you went to, that examined you?

A Dr. Naples.

Q Was Dr. Naples your family doctor?

A No, sir.

Q And who referred you to Dr. Naples?

A It was one of three doctors that my attorney had recommended, since I had no family doctor at the time.

Q And you made the decision, then, to have Dr. Naples examine you?

A Yes, sir. He was closest to where I lived at the time.

Q Had you ever seen Dr. Naples before?

A No, sir.

Q Do you recall the other two doctors that Kevin Brinkworth

R. Marvin, for Government, Cross.

gave you?

A No, sir.

Q You testified that you were injured in the accident, and what exactly were those injuries?

A I received a few bruises about the head and wrenched my neck and back.

Q And after the accident did you immediately go to see the doctor, the police surgeon, or Dr. Naples?

A I called the police surgeon the next day. I could have visited him, too. I can't really recall. We either have to go or call, and I don't remember for this particular incident whether I called or I went to see the police surgeon.

Q How many times did you see the police surgeon, do you recall?

A Between one and two times. I know of one for sure, because when we report back to duty, we have to go through the surgeon.

Q So your recollection is based on the police procedure, then, is that correct?

A Yes, sir.

Q How many times did you visit Dr. Naples?

A I would say approximately ten to twelve times.

Q And could you tell us, is that based on your recollection back in 1972? Have you reviewed any documents that would

R. Marvin, for Government, Cross.

permit you to say it was from ten to twelve times?

A It was more or less based on my recollection from 1972.

Q Did you ever receive a doctor bill from Dr. Naples?

A From Dr. Naples, no.

Q Did you ever receive a medical report from the doctor?

THE COURT: I'm going to preclude this inquiry. It is not relevant what he received from Dr. Naples.

Q Do you know why the insurance claim was not settled?

A Only from what my attorney had offered me, that there were problems with some of the paperwork and visitation and so forth.

Q And do you recall when he expressed that opinion?

A I seen Kevin occasionally, either at some affair or function, and just asked him how things were going, and he just mentioned that he was having problems with some of the paperwork.

Q Do you recall whether you referred Police Officer Wright to Kevin Brinkworth?

A I can't say whether I did or didn't. It is very possible that I commented that I knew Kevin and that he was a fine, young attorney.

THE COURT: Your best recollection is that you told Mr. Wright that you had retained Mr. Brinkworth to handle your claim?

R. Marvin, for Government, Re-direct.

A Yes, sir.

Q So your recollection would be that it was Officer Wright's discussion with the attorney Brinkworth that was subsequent to your discussions with him?

A Yes. This is what I surmised.

Q Are you and Officer Wright presently stationed in the same precinct now?

A No, sir.

Q When was it that the two of you left Precinct 6, then?

A Officer Wright, I believe, left a few months after the accident for another assignment. Then I stayed at Precinct 6 for a few more years, and then I went over to Precinct 17.

Q Prior to the Grand Jury testimony when you were both outside of the Grand Jury Room, approximately how many times had you seen Police Officer Wright within the period of three and a half years?

A Possibly, I believe, two or three times.

MR. SARGENT: I have no further questions.

REDIRECT EXAMINATION

BY MR. BURNS:

Q Mr. Marvin, do you know a Dr. John Mernan?

A Dr. John Mernan?

Q Yes.

V. H. Carey, for Government, Direct.

A No, sir, I can't say that I do.

MR. BURNS: I have no further questions.

(Witness excused.)

VICTORIA HOLLINGER CAREY,
called as a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Mrs. Carey, what is your maiden name?

A Victoria Hollinger.

Q Mrs. Carey, were you involved in an automobile accident
on January 24, 1972?

A Yes.

Q Where did that accident take place?

A Woodlawn Avenue, or Woodlawn Street.

Q In the City of Buffalo?

A Yes.

Q Would you describe what you were doing at the time of the
accident?

A I had just turned onto Woodlawn.

Q You were driving a car?

A I was driving a car.

Q What kind of a car?

A A '66 Volkswagen, and I just turned onto Woodlawn from
Oris, and after I made the turn onto Woodlawn, I heard

V. H. Carey, for Government, Direct.

some sirens, and I saw lights flashing from a police car, and I pulled over to the right as far as I could go, but it was a one-way street, and there were cars parked along both sides of the street, so I went over as far as I could go without hitting a car. Then a police car came along, and it had just rained, and the road was wet, and it was night, and by the time they saw me they slammed on their brakes and went into a skid and hit the back end of my car and ripped off the left rear fender.

Q At the time of the collision, was your car in motion, or was it standing still?

A I think it was almost stopped.

Q In other words, slightly in motion?

A It must have been a little bit. I couldn't say positively.

Q What happened immediately after the collision? What did you do?

A Well, I didn't get out of my car right away, because I was a little bit stunned because I wasn't expecting to actually get hit, and one of the police officers came over to my car door and asked me if I was okay. I said, "Yes," and then I got out of my car and I looked around at what had happened.

Q Can you describe the two individuals, the two police officers?

A I really couldn't. One gentleman was black. The driver

V. H. Carey, for Government, Direct.

was black, and the other gentleman who was the passenger was a white policeman who was a little older. But actually to say what they looked like right now, no.

Q Did you at any time get out of your automobile?

A After they came over and asked, "Are you okay?" Then I got out of my car.

Q What did you say when they asked you, "Are you okay?"

A I just said, "Yes, I think so." Then I got out of my car and just looked around at what happened. My left rear fender wasn't entirely ripped off, but there was only a little piece that was holding it on. It was sticking out away from the car, and I looked at my car and their car.

Q What did you observe as to the condition of their car?

A That is what surprised me is when I saw how much damage had been done to my car, and I looked at the front end of the police car, the right bumper front, and there was only a tiny dent. And I was surprised that there was so much damage to my car when they only had a small dent in their bumper.

Q What happened after you got out of your car and after you looked at the condition of both cars?

A Well, nothing in particular. We were just sort of waiting around. One of the policeman called, and I assumed he asked for a photographer to come down and take pictures and notes of what had happened. And we just sort of

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V. H. Carey, for Government, Direct.

waited around for about a half hour. I didn't really do too much of anything except wait with them. I noticed one of the policeman was writing something down. I couldn't say for positive which one it was, but I just remember I noticed one of them writing something on a pad. I asked them if they were writing a ticket, and they said they were writing a ticket for failure to yield to emergency vehicle. And other than that, I really didn't do too much.

Q Did the black police officer make any complaint to you or state in your presence that he was injured in any respect?

A No.

Q Did you remain at the accident scene?

A For about a half hour.

Q Where were the two officers and where were you?

A We were all sort of standing around, and then after awhile because we were close to the precinct, it didn't take too long for a photographer to come and take pictures of where we were located, and my car and their car. They were just milling around.

Q After the half hour, where did you go?

A Then we went right over to the precinct house.

Q Did you travel together?

A No, no. I drove my car. They tore off the rest of the fender because it was sticking out away from the car, but my car was driveable other than that. We went over to

V. H. Carey, for Government, Direct.

the precinct, and I followed them.

Q What happened inside the police station?

A Well, the desk sergeant was filling out some forms. I assume they were just standard accident forms or whatever, and then he asked me if there were any injuries, and I said, "No," that I didn't think there were. And he asked one of the policemen, the white man, the older man, he asked him if he had any injuries, and he said, "Yes, put me down for neck and shoulders."

I remember I was very surprised to hear that at the time because I looked at him, and I said, "Injuries?" I said, "How could you be hurt? I wasn't even hurt." And he just kind of shrugged me off and wouldn't look at me.

Q Did you hear the same question asked of the black police officer?

A I honestly don't. We were only in the precinct for maybe ten minutes or so. I don't think I was there much longer than that. While they were getting the forms ready and filling them out, then I just remembered the two policemen were just sort of walking around going into the back rooms and back out. And the only thing I remember distinctly is just when the desk sergeant had asked me the question and asked the one policeman, and I understand it is Mr. Marvin, and asked him the question, and I don't recall exactly if the other policeman was standing up at the desk at the

V. H. Carey, for Government, Cross.

time.

Q While you were at the station house, did you hear the black police officer discussing any injuries?

A No, I didn't.

Q Do you know the officer's name?

A Only as of yesterday when I got the subpoena that said "Mr. Wright" on it.

Q What did you do after the paperwork was taken care of at the precinct station?

A I left. I went home.

Q Did you at any time seek any medical treatment?

A No.

Q Did you ever have any X-rays?

A No.

Q Or any other treatment?

A No.

MR. BURNS: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SARGENT:

Q Your name is Mrs. Carey now, is that correct?

A Right.

Q I want to congratulate you. I haven't seen you since you got married, but I am sure your familiarity with myself and my familiarity with your husband won't prevent you

V. H. Carey, for Government, Cross.

from giving honest testimony, is that correct?

A That's correct.

Q Mrs. Carey, this accident happened in 1972 sometime, is that correct?

A Right.

Q Since 1972 and since the accident, can you tell us when was the next occasion that this incident came to your attention?

A After the accident -- well two weeks later I went to court, and about a couple of weeks after I went to court, I was contacted by my insurance company. And they asked me what had happened in court, and then I think it was a couple of months after that I got a call from a claims company, and they said, "This has been turned over to us," and they came out to see me.

Q And subsequent to that?

A Other than that, that is it.

Q So that the next time this accident came to your attention was the subpoena that you were served?

A Right.

Q And prior to your testimony, did you discuss the accident with anyone?

A (No response.)

Q Today, I mean?

A Today?

V. H. Carey, for Government, Cross.

Q Yes.

A I haven't talked to anybody today.

Q How about prior to today and subsequent to the subpoena?

A I talked to Mr. Burns yesterday. I got the subpoena yesterday, and on the bottom it says, "If you have any questions, call Mr. Burns." So I called him, and he asked me to stop down at his office yesterday after work, which I did.

THE COURT: What is your occupation?

A I am a sales representative for the L. M. Berry & Co.

THE COURT: What do they do?

A They sell Yellow Pages.

THE COURT: How old are you now?

A I am twenty-eight.

Q It was yesterday when you discussed the accident with Mr. Burns, is that correct?

A Right, yes.

Q Did you review any documents?

A Well, first he asked me to tell him what had happened, to describe everything, the whole accident and what I felt about it, and that sort of thing. And after I had given him the full description, then he showed me the file that the claims man had filled out -- well, not really a file -- the papers that he had filled out, and I reviewed the case with him four years ago. He had

V. H. Carey, for Government, Cross.

written down on a yellow legal pad word for word everything I had said, and after I told Mr. Burns, giving him the description, then he showed me the file the claims man had written at that time.

Q I show you this file. Is this the file that you are referring to?

A It was just a yellow legal pad, three to four sheets.

Q They were contained in this file?

A I couldn't say. The file wasn't closed like that. It was just open. And the only thing I looked at was the legal pad or the legal sheets.

Q How much time did you spend in reviewing these sheets of paper then?

A Well, I spent about a little over an hour with him, I would say.

Q You say "with him." With who?

A With Mr. Burns.

Q A little over an hour reviewing it?

A I would say a little over an hour, just sort of talking about what had happened and that sort of thing.

MR. SARGENT: I have no further questions.

THE COURT: Is there anything else from Mrs. Carey?

MR. BURNS: No, I have no further

F. J. Edwards, for Government, Direct.
questions, Your Honor.

(Witness excused.)

FLOYD J. EDWARDS,

called as a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Mr. Edwards, do you have a title?

A Captain with the Buffalo Police Department.

Q And how long have you been with the Buffalo Police Department?

A Twenty-six years.

Q And what are your present duties?

A I am the Commanding Officer of the 6th Precinct.

Q How long have you been Commanding Officer there?

A Since 1969.

Q Have you ever had an individual working for you by the name of William Wright at your precinct?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir.

Q Would you point him out, please?

A That is Officer Wright sitting there (indicating).

Q The gentleman in the three-piece suit, is that the one you are pointing to?

F. J. Edwards, for Government, Direct.

A Yes, the black officer.

THE COURT: The record may so indicate.

Q Capt. Edwards, do you know how long Patrolman Wright had been a Buffalo Police Officer, approximately?

A I believe he was appointed sometime in 1970 and worked for me from then until 1973.

Q At the 6th Precinct?

A Yes, sir.

Q Do you know whether Mr. Wright, from your knowledge, attended the Buffalo Police Academy?

A Yes, sir.

Q What kind of training is given in the Buffalo Police Academy, or was given at the Buffalo Police Academy back in 1970?

A They are trained in the law of New York State, the penal law, criminal law, the ordinances. They are given fire-arms training, personal combat training, and I believe they had lecturers that came in and lectured them on social problems and so forth, and also things pertaining to their jobs, such as testifying in court and so forth.

Q What kind of training are they given in testifying in court?

A To answer questions asked of you, not to volunteer anything, and to give your testimony impartially, not trying to prejudice the defendant.

F. J. Edwards, for Government, Direct.

Q Who gives the training?

A That part of the training probably was given by the Chief of Detectives or maybe one of the Inspectors. I'm not sure.

THE COURT: In 1970?

A Yes, sir.

THE COURT: How long does this course take?

A Judge, I am not sure. I think back then it was probably a couple of months. Now it is a little longer, I believe.

THE COURT: Was it full-time attendance?

A Yes, sir.

THE COURT: Regular shift?

A Yes, sir. They didn't have any precinct duties then. When they attend the Police Academy, that is their job until they graduate and then are assigned to their regular duties.

THE COURT: Are there regular written examinations to graduate?

A I believe so.

THE COURT: In 1970?

A I believe so. And that I am not positive of.

Q What were Mr. Wright's duties after he joined you in Precinct 6?

A He worked in the platoons. I think for awhile he was in

F. J. Edwards, for Government, Direct.

the day platoon, and then he was in the second or third platoon, riding the sector car, squad car, answering calls of all nature, making out reports.

Q Was there much paperwork involved in the kind of work he did or work any patrolman would do in your precinct?

A Yes.

Q What kind of reports?

A Just about every call that an officer has to answer, there is a report attendant with it. If it is a fire, then he makes a fire report. If it is an accident, it is an accident report. If it is a lost child, you make an aid to court report. And on an inhalator call, you have to make a report. There is a report just about on every call that they would answer.

Q On the basis of what a patrolman might do in the course of his duties, particularly Patrolman Wright, do you know if he was ever required to testify in court or any other proceeding?

A Yes.

Q And have you checked any records of your precinct to determine whether or not Patrolman Wright had ever testified in Court?

A Yes. I presented court slips to you, but whether or not he testified on those particular cases, I couldn't say.

Q Do you know if there were any occasions when he had to

F. J. Edwards, for Government, Direct.

leave his duties with the precinct to go to one particular court or another or whatever purpose?

A He wouldn't have left his duties in the precinct. He would be given a court date to appear in court and he would appear. And then he would be recompensed for the court, and then he would report back to duty at a later time.

Q Was that generally part of Patrolmen Wright's duties, to testify in court regarding the reports he might have prepared or things he may have seen during the course of his duties?

A Arrests that he made and if the defendant would plead not guilty, it would follow that he would have to appear in court and testify against that person.

Q Capt. Edwards, let me show you what has been marked as Government's Exhibit 9. Can you identify what that Exhibit is?

A This is a page out of the Precinct Message Book. It is a teletype sheet that comes over the teletype machine.

Q What is the Precinct Message Book?

A It is a book that is kept in every precinct. It has to do with all information that police officers in the City of Buffalo should be aware of. For instance, here is "Unauthorized Use of Motor Vehicle," a stolen car. Officers are instructed by the lieutenants. They would be given a description of this car license number and so forth, and

F. J. Edwards, for Government, Direct.

they would look for that car. Here is a robbery (indicating). It happened in Precinct 12.

Q When are these reports prepared?

A These are prepared every minute of the day, twenty-four hours a day.

Q And then are separate message reports for each precinct?

A Yes, sir.

Q Every time an incident happens, is that recorded?

A A message is not sent on every incident, no.

Q Would you look at this particular Exhibit, Exhibit No. 9, and tell me whether this message report was prepared in the ordinary course of your business at the precinct?

A You are talking about the one from Precinct 6?

Q Yes.

A This message was the second one from the bottom, was sent from Precinct 6.

Q Does the sheet contain messages from Precinct 6 as well as other precincts?

A Yes.

Q Is there only one entry pertaining to No. 6?

A On this particular sheet, yes.

THE COURT: Is that a teletype sheet?

A That is a teletype sheet.

Q What are you required to do with this particular sheet?

A (No response.)

F. J. Edwards, for Government, Direct.

Q I mean you are required to put it in a teletype machine, is that correct?

A This sheet of paper came out of the teletype machine. It is torn out and holes are put in, and it is placed in a binder, and it is a permanent record in the Police Department.

Q Was it prepared in the ordinary course of the Police Department's business?

A Yes.

Q Was it the ordinary course of business to prepare a teletype in this fashion?

A Yes, sir.

Q And also to put those entries in at or near the time the event may occur?

A Yes, after the event occurred, as close following as possible.

MR. BURNS: Your Honor, I offer in evidence Government's Exhibit 9.

MR. SARGENT: I have no objection.

THE COURT: It may be received in evidence.

(Government's Exhibit 9 marked in evidence.)

THE COURT: You may proceed.

Q Capt. Edwards, what does the entry pertaining to

F. J. Edwards, for Government, Direct.

Precinct 6 involve?

A Well, it involves one of my squad cars being involved in an accident and one of the officers reporting off duty as a result of that accident.

Q What is the date of the report?

A January 24th, 1972.

Q Who reported off sick?

A Patrolman Richard Marvin.

Q According to that Message, did anyone else report off sick?

A Not according to the way the Message is worded.

Q Capt. Edwards, do you have any responsibilities for keeping attendance records of persons working under you at Precinct 6?

A Yes, sir.

Q How are those records maintained and prepared?

A They are maintained in numerous ways. First of all, each lieutenant of the three platoons has a running sheet in which the man in this platoon are designated each day, where they are working, what duties they have and whether or not they are off or on a weekly vacation, sick or what have you. Then it is transposed from the lieutenant's running sheet and copied into what we call the Force Book. The Desk Officer keeps a daily, weekly, and monthly account of each man in the precinct. I also keep a copy of all leave slips. When a man goes on vacation or reports

F. J. Edwards, for Government, Direct.

off duty or personal leave day or bereavement day or whatever, he submits a leave slip, and I keep a record of these also.

Q Do you have any responsibility for the preparation of the document called the time report?

A Yes, I do.

Q What is the time report?

A The time report is the report by which every man in the Buffalo Police Department is paid. His name is entered on there by computer. The Police Administrator sends them out to the precincts or to each command each two weeks for the Desk Officer to prepare. And from the Force Book and from the lieutenant's report and so forth, as I mentioned before, his time is put on that computerized sheet. It is gone over by myself and then signed by me and sent back down to the Police Administrator's Office.

Q Let me show you what has been marked as Government's Exhibit 10. Would you look at that Exhibit, please?

A (Witness complies.)

Q Will you identify what that is?

A This is a Time Report from the Buffalo Police Department. This shows some of the men from "A" to the letter "G."

Q What period is represented by this Time Report?

A The period ending the first month, 26th day of 1972.

Q Was this report prepared in the ordinary course of the

F. J. Edwards, for Government, Direct.

precinct's business?

A Yes, sir.

Q Was it the ordinary course of the business of the precinct to prepare the report in the manner you described a few moments ago?

A Yes, sir.

Q Do you have any responsibility, personal responsibility yourself, in the preparation of these reports?

A No. I delegate it to an officer.

Q Did you maintain any particular responsibilities?

A It is my responsibility to see that it is correct before I sign it, because I am the one who is ultimately responsible.

Q Did you so certify this one was correct by affixing your signature to it?

A Yes, it is.

Q And, likewise, Government's Exhibit 11. Was this prepared in the ordinary course of your business?

A Yes, sir.

Q Was the ordinary course to prepare it in the manner you described?

A Yes, sir.

Q Did you also certify this one is correct?

A Yes.

Q What period is reflected by Government's Exhibit 11?

F. J. Edwards, for Government, Direct.

A This is the period ending February 9th, 1972.

MR. BURNS: Your Honor, I offer in evidence Government's Exhibits 10 and 11.

MR. SARGENT: I have no objection, Your Honor.

THE COURT: They are received in evidence.

(Government's Exhibits 10 and 11 marked in evidence.)

Q Capt. Edwards, would you look first at Government's Exhibit 10, and I think you earlier testified that this Exhibit is for the period ending January 26, 1972 --

THE COURT: Excuse me just a moment. What are these two Exhibits offered to show?

MR. BURNS: They are offered to show that the defendant, Mr. Wright, did not lose any time from January 24th --

THE COURT: Wait. Do you dispute that?

MR. SARGENT: That has already been part of another Exhibit, Your Honor. We don't dispute it.

THE COURT: You don't dispute that these Exhibits show that?

MR. SARGENT: We do not.

THE COURT: All right. Then let's go

F. J. Edwards, for Government, Cross.

on to something else. They show him present
for duty on the sheets, is that right?

A I didn't look.

THE COURT: Please look at it. I

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thought you had seen them before.

A He was off duty one to three -- the first five days of
the pay period.

Q The pay period ending January 26th?

A Yes.

Q Was that prior to January 24th?

A Yes.

Q Does it reflect any absences after January 24th or sick-
ness?

A No, this doesn't.

Q Then likewise Government's Exhibit 11, does it reflect
any absences during the fourteen-day period ended
February 9th or for sickness?

A No, it does not.

THE COURT: For Mr. Wright?

A For Mr. Wright.

MR. BURNS: I have no further questions.

THE COURT: You may cross-examine,

Mr. Sargent.

CROSS EXAMINATION BY MR. SARGENT:

Q Captain, I am the attorney for the Police Benevolent

F. J. Edwards, for Government, Cross.

Association. I mention that so we establish that that fact would not affect your testimony today, would it?

A No, sir.

THE COURT: In Buffalo, can a captain be a member of that Association?

A I am a member of the Association, sir.

Q Captain, you stated that you had some recollection of some court slips that Officer Wright had submitted, is that correct?

A Yes, sir.

Q I don't recall the period for those court slips. Did you testify to that?

A No, I didn't.

THE COURT: As I understand it, they have not been offered in evidence. So unless they are going to be offered, there is no need to go into them.

MR. SARGENT: Okay, fine. Thank you, Your Honor.

THE COURT: The jury may not infer as to how many they are or what they show. They are not in evidence, and they are not before you.

MR. BURNS: May I approach the bench, Your Honor?

Conference at Side Bar.

THE COURT: Yes.

(At the side bar.)

MR. BURNS: We had some court slips for a very short period of time, two to three-month period, and I certainly intend to argue, though, on the basis of the testimony he has given that part of the defendant's duties include testifying and that he was required, in fact, to go to court during the period when he was working at the precinct.

THE COURT: As I understand, these slips do not necessarily indicate that on the date covered by a particular slip, the defendant actually testified?

MR. BURNS: That's right.

THE COURT: As I understand it, neither this witness nor anyone else knows without recourse to the court docket whether he did. It is logical to assume that anyone who has served as a patrolman for this number of years must have testified a few times. But they are not in evidence, and if they do come into evidence, they don't show anything except that on that particular date he was excused from his regular day to attend court. Perhaps the case was con-

F. J. Edwards, for Government, Cross.

tinued over the term, or perhaps there was a plea, or perhaps the complainant didn't appear.

MR. BURNS: Or perhaps he testified.

THE COURT: Or perhaps he testified.

So no one can tell. So hardly anything can be drawn from that except that he might have testified.

MR. BURNS: Okay.

(In open court.)

CROSS EXAMINATION CONTINUED

BY MR. SARGENT:

Q Is there any aspects of a police officer's training at the Academy that would relate to testimony in a court?

A Yes, sir.

Q There is?

A Let me qualify that. When I went through the Police Academy twenty-six years ago, we were given some instruction on conduct in court, how to testify, as I mentioned before. Whether or not there is a course or this is part of the curriculum now --

THE COURT: We are really not talking about now. We are talking about 1970.

THE WITNESS: Or 1970.

THE COURT: The question should be framed in terms of 1970, and I understand that

F. J. Edwards, for Government, Cross.

is when Mr. Wright attended the Buffalo Police Academy.

A I can't say positively, no.

Q You stated that you at times in your capacity through the years of being a member of the Police Department, you had the opportunity to appear in court giving testimony in a case?

A Yes.

Q Would it be the normal procedure to bring with you the documents that relate to the case that you are there to give testimony for?

A It may or may not, yes.

Q On what type of occasion would it not be appropriate?

A If I were asked to bring in evidence of something of some nature, I would bring my notebook.

Q A notebook that you are referring to is part of the police officer's equipment, if I use that word, is that correct?

A Yes.

THE COURT: We will take a brief recess at this time.

Members of the jury, you will withdraw to the jury room.

We will resume in about ten minutes.

(Recess from 3:35 p.m. to 3:50 p.m.)

THE COURT: You may resume, Mr. Sargent.

F. J. Edwards, for Government, Re-direct.

CROSS EXAMINATION CONTINUED

BY MR. SARGENT:

Q Captain, prior to the recess I was questioning about the notebooks that are issued to police officers. Do you know where these notebooks come from?

A They are issued by the Police Department.

Q And that would be from the Administrator's Office?

A Yes.

Q And after a notebook, which has numerous pages, no doubt, is filled out and the requisition is made out for another notebook, is that correct?

A That's right.

Q And a police officer carries that with him, is that correct?

A Yes, sir.

Q And when he goes on a call, he makes a note on that in his notebook, is that correct?

A He should.

Q So every time he goes on a call, and if he issues a summons or there is an accident or some incident, that is recorded in that notebook?

A It should be.

MR. SARGENT: Thank you very much.

REDIRECT EXAMINATION BY MR. BURNS:

Q Are there any departmental regulations which require that

F. J. Edwards, for Government, Re-direct.

these notebooks be maintained for any period of time?

A I will have to digress a little bit. There used to be, but these notebooks are not maintained the way they used to be.

Q How are they maintained?

A The Manual of Procedure, if I am correct, states that each man will be given a notebook, and as Mr. Sargent got from me, he enters all pertinent things in his notebook on his particular tour of duty. At intervals the captain may ask to inspect an officer's notebook. When the notebook is filled, it is turned in, supposedly. It is supposed to be turned in and a new one issued. This is not done anymore.

THE COURT: During 1972, if you know, was it being done in your precinct?

A I don't think so. I never had occasion to check anybody's notebook, or none have ever been turned into me. Since I have been the captain, they were to be turned into the Administrator.

Q Does that go back to 1969?

A Yes, sir.

MR. BURNS: I have no further questions.

MR. SARGENT: I have no further questions.

(Witness excused.)

Conference at Side Bar.

MR. BURNS: Your Honor, Capt. Edwards was to be the last Government witness; however, in view of his testimony, we would like to call one additional witness.

THE COURT: Will you approach the bench, please.

(At the side bar.)

THE COURT: What is offered to be shown that has not been shown?

MR. BURNS: The training the defendant received at the Police Academy in 1970 regarding testifying in court and elsewhere. When I interviewed Capt. Edwards several days ago, it was my understanding, and I think he testified initially as far as 1970 he had knowledge that the Police Academy did have lecturers come in and give some kind of instruction to these officers. Then, of course, there is no question that he did not state that he had any personal knowledge of the situation in 1970. Now when I interviewed him prior to trial, I believe he indicated he knew what it was in '70. Now this may be my misunderstanding, but in any event the one point I want to cover is that regarding the training, the head of the Police Academy here in

Admonition to the Jury.

Buffalo is out of town for the week but will be back next week, and he would be a very brief witness. The Government has no other witnesses to call.

THE COURT: I wouldn't preclude you from a reasonable continuance to produce that information, but I would like to make use of my time here if there is anything that can be accomplished, and I would appreciate the help and assistance of both counsel in doing it. But if there is nothing that can be done, I will simply have to have a continuance until Tuesday, because Monday is a Federal holiday.

MR. SARGENT: May I make a suggestion?

THE COURT: Yes.

MR. SARGENT: At this point, with your permission, we would like to renew our motion to strike certain information from the Indictment.

(In open court.)

THE COURT: Members of the jury, we are breaking early at this time, and we will resume on Tuesday. I believe I told all of you that Monday is a Federal holiday, and I will not be sitting with you until Tuesday morning because we are selecting juries for the next two

Proceedings in Absence of Jury.

cases. We will be starting a little bit later. I think ten fifteen is a reasonable time, and I ask you all to return to the room that the jury has been using at ten fifteen, Tuesday morning.

Again I would like to say to you that you haven't heard the whole case yet, so you must keep an open mind. You mustn't reach any conclusions about anything, and, of course, you are not to visit any place that was mentioned in the testimony, and you are not to discuss the case with each other or with anybody else. You are not to be in the presence of anyone who is discussing it, and you shouldn't read anything in the newspaper that might concern this case, or listen to anything on the radio that might concern this case, or the so-called matter of Mr. Brinkworth and things like that. I want you to all keep your mind free from any information other than the testimony and the evidence that you get in the court. You may now withdraw for the day, and I will see you at ten fifteen Tuesday morning.

(The jury left the courtroom.)

THE COURT: The Government has rested except for the testimony it wishes to prove from

Proceedings in Absence of Jury.

an individual having knowledge what the curriculum was in 1970 at the Buffalo Police Academy. And I could, therefore, hear motions based on the assumption that the Government had brought in such testimony and had then rested. Is that my understanding of what you wish to do? Is that your position, Mr. Burns?

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MR. BURNS: Well, Your Honor, perhaps I would have stated it in a different way. From the Government's point of view, as we discussed earlier, in a perjury case it is my understanding that the materiality is a question of law. And I understand the Court intends to instruct the jury your normal instruction, which is that if they believe the testimony --

THE COURT: I will instruct them that if you believe that the Grand Jury was, in fact, investigating use of the mails to defraud by Kevin Brinkworth in connection with claims for personal injury damages, then it is material. That would be the gist of what I would instruct them.

I think you have, by stipulation and testimony of the Postal Inspector, together, shown that the Grand Jury was, in fact, inves-

Proceedings in Absence of Jury.

tigating that subject matter, if I remember the record correctly. But I understand that all you intend to bring in on Tuesday, Mr. Burns, is somebody who will say whatever the teaching was that this defendant received at the Buffalo Police Academy in 1970.

MR. BURNS: Yes, Your Honor.

THE COURT: I'm assuming that he will testify as you expect him to testify?

MR. BURNS: Yes, and the only reason I hedge here is I certainly do not intend to bring in any other witnesses; however, if the Court should now make some ruling that we have not carried our burden on the materiality, then since we have not rested, I would just certainly like an opportunity to --

THE COURT: I'm treating you as having rested but for that one particular line of proof, and of course you are never precluded from applying to reopen if something was omitted through inadvertence, but I don't think that is what we are talking about here. I'm sure we are not.

Is that procedure agreeable for you?

MR. SARGENT: Yes, it is, Your Honor.

Motions.

THE COURT: Would you rather go to my chambers to be heard on the motions?

MR. BURNS: I would, Your Honor.

(In the robing room.)

THE COURT: I think I could probably state as an overall view of the relevance or materiality of a question, that relevance could be tested in a Grand Jury proceeding by whether a truthful answer might reasonably be expected to lead the Grand Jury to competent evidence of criminality in the area or the subject that they are investigating. And if such a situation exists, then you would infer from that that the false answer would mislead or hamper the Grand Jury's investigation. The breadth of a Grand Jury investigation includes questions to elicit answers which merely bring up leads. And, really, I suppose that they were asking this man whether he had any transactions with Brinkworth, and any question which may be found in here which might lead to relevant evidence or competent evidence to the criminality of Brinkworth or non-criminality of Brinkworth would be within the authority to investigate. Now I think with that general

Motions.

gauge, you could probably go right down through the Indictment and test each question. I think also each question will have to be tested by what had been testified to before during the session, during the entire minutes. And it also may be that some of these problems the witness did clear up by later testimony that he gave. But I think that would be the test of materiality of a particular allegedly false answer. And I think that the allegedly false statement must be viewed in context of the entire testimony, and not only to get the meaning of the testimony as a whole, but to assist the jury in considering the intent of the defendant at the time he was giving the testimony. And, of course, proof of a single material false answer in this whole Count, a single one will be sufficient.

Now I am prepared to strike out any which are not material within that concept of materiality. That is to say the concept of materiality where a truthful answer would have led or might have led or might reasonably have been expected to lead to competent evidence bearing on the subject matter of their investi-

Motions.

gation, either Brinkworth or the alleged fraudulent practice and unlawful use of the mails in connection with accident claims submitted to insurance companies by Brinkworth on behalf of any clients.

Now let's go off the record for a moment.

(Discussion off the record.)

MR. SARGENT: Let me just quickly refer you to Page 11 of the Indictment, the first set of questions and answers. One of the answers is: "No, I don't. It's all in the accident report. You have a copy of the accident report."

Specifically, one case I left with you -- I Xeroxed it.

THE COURT: That was a non-Second Circuit case, wasn't it? That was a case from the Eighth Circuit?

MR. BURNS: I haven't been given the cite. Would you give it to me?

MR. SARGENT: I will.

THE COURT: It is an out-of-town case, and that doesn't necessarily mean it is not valid.

Motions.

MR. SARGENT: Let me just quickly quote that one statement in that case. The quote from the case is: "It must be indicated that the person answering the questions who was indicted in this case for perjury --"

THE COURT: Before a Grand Jury?

MR. SARGENT: Yes.

" -- did not leave the prosecutor with a place to go."

That was the language of the quote.

THE COURT: I will look at that again. I think the best approach to this matter is for me to state that I understand, Mr. Sargent, that you are moving to strike out all of the questions and answers in Count 1, or each of them, one by one, on the theory either that, one, the prosecution has not shown enough evidence so that a reasonable jury acting reasonably could infer willful falsity beyond a reasonable doubt; and the second, that the particular question and answer was not material. Now I would prefer to take the entire transcript and take this question under advisement until we return on Tuesday.

Do I state your position adequately?

MR. SARGENT: Yes, you do, Your Honor.

THE COURT: Then I will reserve decision on it, but I caution you in preparing to go forward on Tuesday morning, you must have to assume that the motion might be denied, so I don't want you to claim surprise should it be. I'm not saying that I will deny it.

Now is there any part of this that you consent shall come out, Mr. Burns?

MR. BURNS: Frankly, Your Honor, after the matter was brought up this morning before you, I have not had the chance to go through and find portions which at this stage I consent to, but, likewise, I will be glad to do it over the week end and before your ruling, I will be glad to state that we could or could not withdraw some of the matters.

THE COURT: If you do agree to withdraw any of them, would you kindly just give me a half-page memorandum to that effect and a copy to your adversary, that I could have at nine o'clock?

MR. BURNS: Yes, Your Honor. That is fine.

THE COURT: Or even hand-written, and if you don't, please tell the Clerk the first

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thing in the morning.

MR. BURNS: Yes, Your Honor.

THE COURT: All right. The matter
is continued for all purposes until Tuesday.

(At 4:35 p.m., an adjournment was
taken to Tuesday, October 26, 1976.)

- - -

Proceedings, October 26, 1976.
T. F. Higgins, for Government, Direct.

Buffalo, New York

Tuesday, October 26, 1976

10:30 a.m.

- - -

THE COURT: May the record show that Mrs. Novachek, Juror No. 2, has called in ill and has been excused by the Court. I hope all the rest of you will stay in good health, members of the jury.

All right, Mr. Burns, you may go forward.

MR. BURNS: The Government calls Lt. Thomas Higgins.

THOMAS F. HIGGINS,
called as a witness by the Government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BURNS:

Q Lt. Higgins, where are you employed?

A The Buffalo Police Department.

Q What is your position with the Police Department?

A I am a lieutenant in charge of training at the Academy.

Q How long have you been with the Police Department?

A Twenty years on July 15th.

T. F. Higgins, for Government, Direct.

- Q What are your general duties as the head of the Training Department?
- A Presently in the Training Academy, I set up curriculum for in-service training classes.
- Q Is this called the Buffalo Police Academy?
- A Yes.
- Q What is the function or the purpose of the Buffalo Police Academy?
- A Up to a couple of years ago, it is training recruits. It involves in-service training.
- Q How long have you been head of the Police Academy?
- A Since July 1st.
- Q Of this year?
- A Yes, sir.
- Q Lt. Higgins, does the Police Academy maintain certain records of its activities?
- A Yes, sir.
- Q What do those records, very generally, consist of?
- A The students attending classes, the curriculum outlines, attendance records, lectures given, the dates, the proficiency of the students.
- Q Pursuant to my request, did you bring over to this courthouse various records and documents of the Buffalo Police Academy?
- A Yes, sir.

T. F. Higgins, for Government, Direct.

Q Lt. Higgins, let me show you what has been marked Government's Exhibit 12. Can you identify that Exhibit?

A Yes, sir.

Q What is it?

A It is a course outline of study, a basic recruit course.

Q For what recruit course -- I mean, what period of time are we talking about?

A August, September, 1970, to the end of December, 1970.

Q Was this recruit course prepared in the ordinary course of Police Academy business?

A Yes, sir. I assume it was.

Q Was it the ordinary course of Police Academy business to prepare this record in this fashion and maintain it?

MR. SARGENT: I'm going to object to the question. He hasn't laid the proper foundation in that this lieutenant was in the Academy during that year.

THE COURT: Lt. Higgins, are you currently the custodian of the records of the Academy which were in effect five years ago?

A Yes, sir.

THE COURT: I will allow the question. Are you asking him with reference to what the

T. F. Higgins, for Government, *Voir Dire*.

Academy was doing? What year now?

MR. BURNS: 1970, Your Honor.

Q As reflected in the records, was it the ordinary course of Police Academy's business to maintain Government's Exhibit 12, to prepare and maintain it in the fashion you described?

A Yes, sir.

MR. BURNS: Your Honor, I offer in evidence Government's Exhibit 12.

MR. SARGENT: Your Honor, I have just one question to ask on this Exhibit.

THE COURT: Very well.

VOIR DIRE EXAMINATION

BY MR. SARGENT:

Q Lt. Higgins, there is a date on the top of that first page, is that correct?

A Yes, sir.

Q What does that state?

A It says, "Revised July, 1970."

Q And could you tell us what the recruit course would cover, what period of time this would cover?

A This would be September to December, 1970.

Q Is it possible, then, there was a different course in 1971? Would you be able to tell from this document whether this was also the recruit course given in 1971?

T. F. Higgins, for Government, Direct.

A No, sir.

Q So it is only the recruit course given in 1970, this particular course at this particular time, is that correct?

A Yes, sir.

MR. SARGENT: I have no objection.

THE COURT: If there is no objection, it will be received in evidence. Is it Government's Exhibit 13?

MR. BURNS: It is Government Exhibit 12.

THE COURT: I have Exhibit 12 as the X-ray report.

MR. BURNS: They have been mis-numbered.

THE COURT: Re-number this paper as Government's Exhibit 13.

MR. BURNS: I have marked several documents in sequence, Government's Exhibit 12 through 17 already. Perhaps for clarity, we should mark it as Government's Exhibit 18.

THE COURT: All right. It will be marked as Government's Exhibit 18.

(Government's Exhibit 18 marked in evidence.)

DIRECT EXAMINATION CONTINUED BY MR. BURNS:

Q Lt. Higgins, does the Police Academy maintain any records of the students who have taken the basic recruit course?

T. F. Higgins, for Government, Direct.

A Yes, sir.

Q Where are those records maintained?

A In the filing cabinets in the Police Academy office.

Q Are you custodian of those records?

A Yes, sir.

(Government's Exhibits 13 through 17
marked for identification.)

Q I hand you what has been marked as Government's Exhibit 13
for identification. Can you identify that Exhibit?

A That is a training record, P-277, of William G. Wright,
Shield No. 383. It states his date of employment, 8-26-1970.
It says: "Type of Training: Basic recruit training from
8-26-1970 until 12-18-1970. Received 742 hours of train-
ing."

He was awarded a certificate.

Q Was this Exhibit prepared in the ordinary course of the
Police Academy's business?

A I would assume it was.

Q And was it the ordinary course of the Police Academy's
business to prepare this training record?

A Yes, sir.

MR. BURNS: I offer in evidence
Government's Exhibit 13.

MR. SARGENT: I have no objection,
Your Honor.

T. F. Higgins, for Government, Direct.

THE COURT: There being no objection,
it is received in evidence.

(Government's Exhibit 13 marked in
evidence.)

Q Lt. Higgins, does the Police Academy maintain any daily attendance records for the recruits who are attending the basic course?

A Yes, sir.

Q I hand you what has been marked Government's Exhibit 14 for identification. Can you identify that three-page Exhibit?

A Yes. It is the attendance records of the trainee, the student trainee. It is in alphabetical order.

Q It is the entire attendance record for that class?

A No, sir.

Q What portion of the class is represented on this record?

A The initials in the alphabet V, W, Z, the individuals who are on the sheet.

Q What basic recruit course does this represent?

A The period between 8-26-1970 and 12-18-1970.

Q Was there attendance records prepared in the ordinary course of the Police Academy's business?

A Yes, sir.

Q Was it the ordinary course of the Police Academy's business to prepare this attendance record?

T. F. Higgins, for Government, Direct.

A Yes, sir.

Q Are you the custodian of this record?

A Yes, sir.

MR. BURNS: I offer Government's Exhibit 14 in evidence.

MR. SARGENT: I have no objection.

THE COURT: Exhibit 14 is received in evidence.

(Government's Exhibit 14 marked in evidence.)

Q Lt. Higgins, I hand you Government's Exhibit 18, which you have identified as the lesson plan, or the outline for the basic recruit course in 1970. Would you tell me, Lt. Higgins, whether there was any time devoted during the recruit course to court procedures?

A Yes, sir. Under Item 14, Court Procedures, was a total of twelve hours; purpose of testimony, personal appearance, direct testimony, cross examination, court organization and procedures, and a moot court.

Q What is a "moot court"?

A It is a courtroom for the training session, a simulated setup to look like a courtroom where usually an attorney is sitting as the judge, an attorney from the District Attorney's Office acting as a prosecutor on a hypothetical situation of a crime, with a victim and witnesses, and

T. F. Higgins, for Government, Direct.

they conduct a trial for training purposes.

Q Lt. Higgins, let me hand you what has been marked as Government's Exhibit 15. Can you identify that Exhibit?

A Yes. It is Form P-73. It is from Captain Morrissey from the Police Academy to Lt. William Schilcott.

Q Does this relate in any way to the business of the Police Academy back in 1970?

A Yes, sir.

Q And what is its relation to the Police Academy's business?

A Subject of Training: City Court -- observation and organization and procedures. The schedule date was December 11, 1970, and the time period was 1 p.m. to 4:30 p.m.

Q I show you what has been marked as Government's Exhibit 16 for identification, which is attached to several other pieces of paper. Could you tell me what this file is that this particular Exhibit is attached to?

A It is a carbon copy of the letter dated September 28, 1970, to Mr. Spiro Const, Confidential Law Clerk of the Family Court.

Q Is this letter normally found in a particular file together with other documents?

A Yes, sir.

Q And where is it found in your office?

A In the filing cabinet, in the folder for this particular basic recruit class.

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T. F. Higgins, for Government, Direct.

Q What are the groups of letters that are stapled together with Government's Exhibit 16?

A These are copies of letters to individuals requesting that they give a lecture on the basic recruit course.

Q And is Government's Exhibit 16 such a request?

A Yes, sir. This is for Family Court procedure scheduled for November 24th.

Q I ask you to look at what has been marked as Government's Exhibit 17. Is this another one of those letters that you referred to, to schedule certain training for the Police Academy?

A Yes, sir. This is one to the District Attorney, who at that time was Michael Dillon, requesting activities in their office for training purposes.

Do you want me to read it?

Q Just what is the subject of the letter?

A The subject is: "Requesting approval giving the lectures on the following dates:" One is for the "No Knock Law" September 28th -- actually, here it is listed "Knock-Knock Law."

THE COURT: That is a State of New York
Law?

A Yes, sir, and the Stop and Frisk Law, State of New York; probable cause; and case preparation and presentation.

Q Lt. Higgins, are these last three Exhibits that I have

T. F. Higgins, for Government, Direct.

just shown you, that is, Government's Exhibits 15, 16 and 17, were these letters prepared in the ordinary course of the Police Academy's business?

A I believe they were.

Q And that was the regular course of the Police Academy's business to prepare these records that you brought to court today?

A Yes.

MR. BURNS: Your Honor, I offer in evidence Government's Exhibits 15, 16 and 17.

MR. SARGENT: I have no objection, Your Honor.

THE COURT: There being no objection, Government's Exhibits 15, 16 and 17 are received in evidence.

(Government's Exhibits 15, 16 and 17 marked in evidence.)

MR. BURNS: I have no further questions.

THE COURT: You may cross-examine.

MR. SARGENT: I have no questions.

THE COURT: Mr. Higgins, you may step down.

(Witness excused.)

MR. BURNS: The Government has one further matter to take up.

Offers.

THE COURT: Have you marked all of your Exhibits in evidence, because the Clerk's record of what is in evidence will be controlling.

MR. BURNS: That is one matter I want to discuss right now, and those are the two Exhibits which have been marked Government's Exhibits 1 and 2, which were not offered which I would like to offer at this time.

THE COURT: Any objection to Government's Exhibits 1 and 2?

MR. SARGENT: I have no objection.

THE COURT: There being no objection, Government's Exhibits 1 and 2 are received in evidence.

(Government's Exhibits 1 and 2 marked in evidence.)

THE COURT: What about Government's Exhibit 8 for identification?

MR. BURNS: I don't intend to offer it. I thought --

THE COURT: You don't need to explain.

MR. BURNS: My records indicate that all the Exhibits, Government's Exhibits 1 through 18 are in evidence with the exception of Government's Exhibit 8. I hope that is correct.

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THE COURT: That is what my indication is. Do you agree with that?

MR. SARGENT: I agree with that.

MR. BURNS: Your Honor, the Government rests.

THE COURT: Members of the jury, will you withdraw briefly to the jury room. Don't discuss the case, and I will resume with you in about ten minutes.

(The jury left the courtroom.)

THE COURT: Mr. Sargent, you may begin at this time.

MR. SARGENT: Your Honor, as we had discussed it in chambers, we have requested that certain information in the Indictment be struck and also that a verdict for not guilty be directed at this time.

THE COURT: Would you address yourself to Count 2, if you will, please?

MR. SARGENT: As to Count 2?

THE COURT: If you would like me to require Mr. Burns to be heard and then respond to him, I will let you do that.

MR. SARGENT: Yes.

THE COURT: Ask to Count 2 only, Mr.

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Burns, would you review for me whether there is sufficient evidence on Count 2 to go to the jury?

MR. BURNS: Yes, Your Honor. Count 2 charges that the defendant did corruptly obstruct and impede and endeavor to obstruct and impede the due administration of justice.

The testimony in this case has included the transcript of the testimony given by Police Officer Wright before the Grand Jury, which the Court, I think, will note contains approximately ninety-five separate occasions where the defendant professed to have no recollection of certain events regarding his automobile accident claim of January 20, 1972.

I think the evidence also shows on the date that he testified before the Grand Jury, the Grand Jury was conducting an investigation into Kevin Brinkworth, the attorney representing Mr. Wright.

I think the testimony also shows that the defendant, as charged in Count 1 of the Indictment in the various specifications, professed no recollection as to the number of times he went to see the doctor, and at one point saying he couldn't even recall if it was one hundred times

or on one occasion.

There are two Second Circuit cases regarding charging a defendant under these circumstances for making false and evasive answers. The cases are U. S. v. Alo, 439 F. 2d. 751, and U. S. v. Cohn, 452 F. 2d. 881. In each case the defendant was charged with perjury in one Count and in the other Count with obstruction of justice. Circumstances in both cases were quite similar, that is, the defendant testified before the Grand Jury and professed a lack of memory. The defendant was subsequently charged with perjury and obstruction, and in each case the Court of Appeals found sufficient evidence to find that the defendant had, in fact, obstructed justice. And if I might quote from the Alo case, at Page 754, the counterpart of Section 1503, and that is the one referring to obstruction of agency business, the Court said: "Section 1505 deals with the deliberate frustrations through the use of corrupt or false means of an agency's attempt to gather relevant evidence."

And then there is the important language: "The blatantly evasive witness achieves this effect as surely by erecting a screen of feigned

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forgetfulness as one who burns files or induces a potential witness to absent himself."

I think the Second Circuit states it is the deliberate concealment of this which may result in obstruction of justice.

THE COURT: I believe as to Count 2 there is insufficient evidence to permit a reasonable juror acting reasonably to convict. All that the evidence shows, viewed most favorably to the Government, that he lied or took an arrogant view about answering and persists in saying he didn't remember. That is the most that can be inferred. On many occasions he did not impede them because he did tell them where the information could be obtained. There is no motive shown here. Of course, motive need not be shown on Count 1, but this Count 2 imposes a requirement that he corruptly obstruct and impede, and more than just a mere intention to lie, I think, has to be shown. There has to be shown a desire to obstruct the administration of justice, that that is what he intended, and that is what he did. And I think it is insufficient on Count 2, so I will acquit the defendant on Count 2.

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I don't think there is any problem on Count 1. The Government has furnished the Court with a marked copy of the Indictment. The only thing I would say about that is that on the sixth page of it you have that typographical error where the word "assume" was printed instead of "saw him," and I think probably that particular portion ought to be redacted in view of the mistake there. But I think as far as the rest of it is concerned, once they underlined it and specified what they claimed was false, I don't see any particular question that is left there that would require me to strike out as being a vague question or an immaterial question. He has limited it now, so only the underlined matters, and I am going to mark this Indictment as an Exhibit so it can be identified, this marked copy --

MR. SARGENT: Your Honor, as to what he has underlined, we certainly understand that process. However, if you take Page 3, there is nothing underlined on that. I don't see the relevance of the questions and answers, and we would maintain --

THE COURT: There are two that are

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underlined on Page 3.

MR. SARGENT: He didn't underline my copy of it.

MR. BURNS: Doesn't counsel have a copy of the same thing that the Court has?

THE COURT: He has but he is on the wrong page.

MR. BURNS: For the record, I furnished Mr. Sargent with a copy of this the same time I furnished the Court with one this morning.

MR. SARGENT: I was referring to Page 2 -- I'm sorry about that.

THE COURT: You see, they are allowed to plead these contextual questions if they don't contend they are false, and I would clearly explain to the jury only the underlined material is claimed to be false. I don't see any underlined answer where the question was vague or where the evidence sought could be said to be immaterial. I assume a reasonable person would think when a witness is asked, "What doctor did you see," and the witness answers, "I couldn't tell you his name," that that is the same as saying, "I don't remember his name." You wouldn't quibble over that, I'm sure, would

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you?

MR. SARGENT: No, I would not.

THE COURT: So I think they have cured the problems except for that difficulty presented on Page 6 where the word "assume" appears incorrectly. I would redact that particular question and answer and strike it out. If there are any others in there where the question is vague or where, in your view, a reasonable juror could not find falsity, then --

MR. SARGENT: Your Honor, the other question that we raised were that certain of these questions and answers are immaterial to the Grand Jury investigation.

THE COURT: I don't think that is so, but if you want to pinpoint a particular one of those that he claims are false, I will deal with that again on the record.

MR. SARGENT: On Page 11 (Reading):

"Question: Was the car standing in front of you or was it moving at the time you struck it?

"Answer: I don't recall what caused the accident."

THE COURT: All right. I would be

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inclined to agree on that. That is non-responsive.

MR. SARGENT: The second question and answer.

THE COURT: All right. I will redact that question and answer.

MR. SARGENT: Then the question, "Can you recall what Marvin was doing at the time of the accident?"

I don't see the relevance or the materiality to the investigation.

THE COURT: Well, it is material to look into Marvin's claim, because Marvin apparently had a claim which --

MR. SARGENT: Whether he was sitting up or talking on the radio, I don't think is relevant to, in fact, whether he was injured or not.

THE COURT: You see, we don't know that, do we? We don't know what a truthful answer would have led to.

What do you say about that last one? Maybe that ought to go out also?

MR. BURNS: Patrolman Marvin did testify, and he said he was also a client of

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Mr. Brinkworth.

THE COURT: The jury knew that, didn't they?

MR. BURNS: Yes, sir.

MR. SARGENT: They heard his testimony prior to Mr. Wright's.

THE COURT: How could a truthful answer lead to anything on this particular last question?

MR. BURNS: As you recall, Patrolman Marvin on the witness stand here in this courtroom testified that he was leaning over at the time the accident occurred and manually operating the siren, and I believe his testimony was consistent with what he testified before the Grand Jury.

THE COURT: I suppose the fact that he was operating the siren might have been relevant because it bore upon whether this was a fraudulent claim.

MR. SARGENT: Their own witness testified that they investigated and they found out that it was an emergency situation.

THE COURT: That it was an emergency situation?

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MR. SARGENT: Yes.

THE COURT: I think that a truthful answer might have led to relevant information. The Grand Jury was properly interested in finding out whether either Marvin's claim or this witness' claim was a fraudulent or fictitious or non-meritorious claim.

And that was an element of any mail fraud. If the man was actually injured and actually went to the doctor, and if there was actual liability, there couldn't be any misconduct on the part of Brinkworth, and if the siren was going on the car, that is some indication the car was an emergency vehicle which was entitled the right of way and that the Volkswagen was in the wrong. So I think that last question and answer is --

MR. SARGENT: If I may just interject, Your Honor, and make this last point. The question is, in fact, "Was he sitting up, talking on the radio --"

THE COURT: Yes, but a truthful answer would have been, according to the Government's theory, that he was operating the siren, and that answer would have led the Grand Jury

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to acknowledge was helpful in resolving the issues which it had before it. It may be rather stretched, but I don't think I can strike it out as a matter of law.

MR. BURNS: If I may give an additional basis for keeping this in the Indictment, in the Government's point of view, the question of where Mr. Marvin was or what Mr. Marvin was doing at the time of the accident might also lead the jury to conclude that he could reasonably have been injured, that is, by being in an awkward position, or he could not reasonably have been injured considering the fact that they had pictures of the automobiles involved in the accident.

THE COURT: All right. I decline to strike out that question and answer.

I must say it is more reasonable that this witness could not remember what Marvin was doing than it is to say that he couldn't remember what he was saying.

All right. I will strike out that next to the last question and answer on Page 11, and I will strike out the one in the middle on Page 6, which has a typographical

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error. You know what I am talking about now?

MR. BURNS: Yes.

MR. SARGENT: Yes.

THE COURT: A redacted copy which has no appearance of eliminating material must be prepared and given to the jury.

MR. BURNS: All right, Your Honor.
We can do that.

THE COURT: Just do it with the Xerox machine.

Is there anything further at this time?

MR. BURNS: No.

THE COURT: How long will you be with your end of the case, Mr. Sargent?

MR. SARGENT: We have several witnesses.

THE COURT: Get them lined up during the recess so we can be ready to go ahead.

MR. SARGENT: All right, Your Honor.

THE COURT: The Court will be in recess.

(Recess taken.)

(Jury present.)

THE COURT: Members of the jury,

W. J. McLean, for Deft., Direct.

Count 2 of this Indictment is no longer before you for your consideration. You are not to speculate or wonder or concern yourself in any way with respect to any ruling that I may have made.

The defendant may now go forward with respect to Count 1.

MR. SARGENT: Thank you, Your Honor.

The first witness will be William McLean.

W I L L I A M J. M C L E A N,

called as a witness by the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Detective McLean, you are a detective-sergeant with the Buffalo Police Department, is that correct?

A Correct.

Q How long have you been a member of the Police Department?

A Since 1951.

Q Am I correct that as a detective, you are appointed to that position by the Commissioner of Police?

A Yes.

Q And as a detective, your present position with the department is where, sir?

A I am presently assigned to "C" District Detectives.

Q What was your assignment prior to that?

W. J. McLean, for Deft., Direct.

- A At the beginning I worked in the 12th Precinct as a patrolmen. In 1955 through 1958 I was assigned to the City Court as a court liaison officer for the Police Department. From '58 to '64, I was in charge of the Bureau of Detectives Division, Special Frauds Bureau. And from 1964 to 1966, I was Special Investigator for the Appellate Division, Fourth Department, and from '66 to '68 I was a Resident Special Agent for the American Insurance Association. And from 1968 to 1975 I became a lieutenant, and I was assigned to the Training Academy, Buffalo Police Department. And when I became a lieutenant, I was assigned to the 3rd Precinct. And in March of 1975 I was reassigned to the Training Academy. And on July 1st of 1976, for economic reasons, I was demoted to a detective-sergeant again and sent to "C" District. And that brings me right up to date.
- Q Am I correct, in the year 1970 you were assigned to the Police Training Academy?
- A Yes, I was.
- Q As part of this assignment, did you teach a course entitled "Arraignments, Hearings and Trials"?
- A Yes, I did.
- Q And also did you teach a course entitled "New York State System in Grand Jury"?
- A Yes, I did.
- Q Does the curriculum in these courses include instruction

W. J. McLean, for Deft., Direct.

to the training officers on how the police officers should testify in court?

A Yes.

Q And as part of this course that you taught, training police officers, is a police officer instructed that when asked questions in court relative to his recall of facts, if he doesn't remember those facts, is he instructed to guess or estimate or speculate?

A He is not instructed to estimate or speculate. He is required, or rather he is instructed, I should say, to testify to what he knows factually, or what he can recall, using his notes or anything like that to refresh his memory.

Q And if he didn't have the occasion to have any notes or report with him, an accident report or a crime report, and he was asked the question in court, in that court, he was instructed to either give the facts that he remembers or else, I assume, he would say, "I don't remember," is that correct?

A Yes.

MR. BURNS: I object to the leading here.

THE COURT: It is leading, but if somebody doesn't remember, he has a right to so testify. That is clear law. You don't need to bring a witness in to show that.

W. J. McLean, for Deft., Direct.

Q Okay. Can you tell us in this course, then, that you were the instructor teaching these police officer trainees, how was the police officer instructed relative to his court testimony?

A We do a whole range of things when you instruct in this area, and I instructed recruit police officers over a number of years, aside from the time assigned to the Academy. From a teaching situation, we supply them the charts and the organization of the court system, and then we deal with the conduct of the police officer and what is direct evidence or what is first-hand testimony -- that kind of thing. We deal in an instruction situation, trying to acquaint the recruit officer with what is an awesome situation which he hasn't been into before, which is the courtroom, and to keep his testimony as simple as possible and not to anticipate what somebody is going to ask him, and to testify truthfully, to use his notes if he has them, and to make sure that his notes are pretty pure in that he doesn't have a grocery list or his wife's instructions to him on that same note or sheet if he is going to use it for reference -- that kind of thing.

Q Was there a course in 1970, as you recall, relative to the notebook, and note-taking and training?

A Yes. In the total recruit curriculum there is a period in there where notebooks are issued a police officer, and they

W. J. McLean, for Deft., Cross.

are instructed on how to take notes.

Q And there is also a course on accident reports, the compilation and filing of accident reports and crime reports?

A Yes.

MR. SARGENT: I have no other questions.

CROSS EXAMINATION

BY MR. BURNS:

Q Detective McLean, would you look, please, at Government's Exhibit 18, which is the basic recruit course lesson plan in 1970, and would you kindly circle on this Exhibit those lectures which you gave or that instruction which you gave that you have just testified about in response to Mr. Sargent's question?

A On this?

Q Please look at it and just circle those areas of instruction that you gave.

A I can say which areas I would lecture. I can't tell you specific dates of lectures from this, because this is just a curriculum.

THE COURT: Did your lectures generally follow your curriculum?

A Yes.

THE COURT: What is it you are asking the witness to do here? If his lectures generally followed the curriculum, what is the need

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to mark the Exhibit?

MR. BURNS: I'm trying to find out what lectures he particularly gave, because apparently, we are having some contradictory statements --

THE COURT: May I see this, please?

(Document handed to the Court.)

THE COURT: Please reframe the question. It is not clear to me what you are trying to elicit.

Do I understand, Mr. McLean, that you taught, generally, what is in the curriculum?

A Yes, sir, I did.

Q Did you teach any of the subjects which are listed in Paragraph 14, that is, Court Procedures, which is a twelve-hour block of instruction?

A Yes. I would have given some of this instruction, but I could not tell from this syllabus. This is a syllabus that you are looking at, but I would have instructed in that area, yes.

Q Were there other instructors?

A Yes, there were.

Q I take it you had some guest lecturers in from time to time?

A Yes.

W. J. McLean, for Deft., Cross.

Q Such as people from the District Attorney's Office?

A People from the District Attorney's Office, and from the legal profession, from the Bar Association.

Q Detective McLean, are police recruits instructed or advised that they should testify truthfully?

A Yes.

Q Are they advised that they should testify as fully as possible regarding the matter on which they are testifying?

A Yes.

Q Are they also advised to be as responsive as they possibly can to questions asked to them under oath?

A Yes.

MR. BURNS: I have no further questions.

THE COURT: Anything else from Mr.

McLean?

MR. SARGENT: I have nothing else.

(Witness excused.)

MR. SARGENT: At this time I will call Dennis Denny.

(Pause in the proceedings.)

MR. SARGENT: Mr. Denny is not here yet, Your Honor.

THE COURT: May we have somebody else, then, and you can get him later on.

MR. SARGENT: The only other witness

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following him would be the defendant, Your Honor.

THE COURT: Would you step over here,
please.

(Off the record conference at the
side bar.)

MR. SARGENT: The next witness we will
call is the defendant, William Wright.

W I L L I A M G . W R I G H T ,
the Defendant, called as a witness in his own behalf, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Officer Wright, can you give us your age, please?

A I am thirty-five years old.

Q Are you married?

A Yes, I am.

Q Can you tell us where you were born and when you arrived
in Buffalo?

A The first twelve years I lived on Steelawanna Street in
Lackawana, and then my mother and father and my two sisters
and my two brothers moved to Buffalo.

Q And you went to high school where?

A I went to Lafayette High School in Buffalo.

Q Can you tell us what did you take up in Lafayette High
School?

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A General academic course.

Q Did you receive an academic diploma in Lafayette?

A Yes, I did.

Q Would you tell us after graduation what did you do?

A I enlisted in the United States Navy.

Q How long were you in the Navy, sir?

A Four years active duty and two years reserve.

Q When you were discharged, what was your rank?

A E/3.

Q Was that an honorable discharge?

A Yes, it was.

Q Can you tell us after your discharge from the Navy, what did you do?

A After I got discharged from the Navy, I moved back in with my parents, and I became employed at Bethlehem Steel.

Q How long did you work at Bethlehem Steel?

A For five years.

Q During your employ at Bethlehem Steel, did there come a time that you took the Buffalo Police Officer's examination?

A Yes. I became aware that the City was having a minority recruitment drive, and I made application at that time.

Q It came to be that you passed the Civil Service examination for Buffalo Police Officer, is that correct?

A Yes, I did.

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Q Did you attend the Police Training Academy in the year 1970?

A Yes, I did.

Q And at the Academy, did you take a course entitled "Notebook Training"?

A Yes, I did.

Q Could you please tell us what you were instructed in that course?

A When we got into the Academy, they gave us blue books, notebooks, and they instructed that we should keep these notebooks with us at all times and that we had these notebooks to record pertinent information in them so that if we had to go to court to testify that we could refer to our blue books to testify to the facts.

Q Did you also take a course relative to the court system and the Grand Jury?

A Yes, I did.

Q As part of these two courses, what were you instructed and how were you instructed to testify in court?

A Well, as a police officer, we were obligated to testify to facts in a court of law. The instructors emphasized that we should never render a speculation, guess or personal opinion, and if there was something that we weren't quite sure of, that we should so testify that we weren't sure of it.

Q Am I correct in stating, in testifying in court as a

W. G. Wright, for Deft., Direct.

police officer that prior to any testimony you would review any notes that you had or any reports that you had with the District Attorney if it was in the State court?

A Yes. One of the instructions that Sgt. McLean alluded to is the District Attorney did send people from his office up, and he instructed us that we should always, prior to going into court, contact the District Attorney so he could ask us questions and get the answers that he wanted in court, and also to make available to us the different evidence and reports that he might have.

Q Did you also take a course in the Training Academy called "Crime Reports and Accident Reports"?

A Yes, I did.

Q What were you instructed in these courses?

A These courses were set up to familiarize us and teach us how to fill out the multitude of reports that we have to deal with as police officers, and as Captain Edwards testified to, everything that we do and observe is recorded on the report. And when we go into court we usually have these reports. And if it is an accident, it is an accident report; and if it is a crime, we have a crime report that we filled out at the scene that we can testify from and not rely on memory.

Q Did you have the accident report of the accident of January, 1972, with you or before you when you testified

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before the Grand Jury?

A No, I didn't. I didn't have any reports.

Q Did you have any notes or any reports, or did the U. S. Attorney furnish you with any material to recall your memory as to those facts in the accident?

A No. I didn't have anything.

Q After the Training Academy, where was your first assignment?

A I was assigned to Precinct 6.

Q Can you tell us where Precinct 6 is located?

A Precinct 6 is located in the Inner City, Main Street, near Glenwood.

Q Am I correct in stating that in 1970 and '71 and '72, Precinct 6 was a precinct that responded to more calls than any other precinct in the City?

A That's correct. Precinct 6 was the busiest precinct house in the City.

Q Were you a patrol officer in Precinct 6, or were you behind the desk?

A No. I was a patrol officer.

Q And you were out on the street as a police officer, is that correct?

A That's correct.

Q Were you and Officer Marvin always assigned to the same patrol car in Precinct 6?

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- A No. I very seldom worked with Officer Marvin. Officer Marvin worked the four p.m. to twelve midnight and also the twelve a.m. to eight a.m. shift. And I worked the four p.m. to twelve midnight shift steady.
- Q Just for clarification, the rotation of shifts in the Police Department is the second shift one day, which is four to twelve, and then the next day, it is the third shift which is eight to four, is that correct?
- A That's correct. When you go in and start the day, the first shift will be your twelve midnight to eight a.m. shift and then you would have to come back the same day at four p.m. to twelve midnight. That is the way Marvin worked. I worked straight four p.m. to twelve midnight shift.
- Q And in Precinct 6, who was your immediate supervisors, do you recall?
- A Lt. Schlesinger and Lt. Wishman.
- Q And Lt. Schlesinger is a captain now, is that correct?
- A Yes, I believe he is captain of Precinct 7.
- Q Subsequent to your assignment in Precinct 6, you were reassigned, is that right?
- A That's correct.
- Q Where were you reassigned?
- A I was reassigned to Precinct 12, and at the time I was reassigned to Precinct 12, it was the busiest precinct. It

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handled most citizens' calls at the time I was transferred.

Q Where is Precinct 12 located?

A It is located in the Inner City, again, on Genesee Street.

Q And you remained at Precinct 12 until the present, is that correct?

A That's correct.

Q So it is a fact, therefore, that your entire life but for your formative years in Bethlehem Steel, was spent in the Inner City, growing up and working, is that correct?

A That's correct. I have been in the Buffalo area all my life.

Q While at Precinct 12, did you receive a degree from Buffalo State College?

A Yes, I did. I received a Bachelor of Science degree in Criminal Justice.

THE COURT: When was this, Mr. Wright?

A I received my Bachelor of Science degree in '75.

Q So that you were working from the four to twelve shift and going to school during the day for your Bachelor of Science degree?

A That is correct. I had classes from eight a.m. to about three p.m. and then I would go to work at four p.m. until twelve midnight.

Q And the degree that you had received from Buffalo State is related to your police work, is that correct?

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A Yes. It is directly related.

Q In 1973 were you detailed from Precinct 12 to the Division for Human Relations under Father Kenneth Curry?

A Yes, I was.

Q Could you please tell us what those duties would have been?

A Working with Father Curry --

THE COURT: Is this before or after
May 20th, 1975?

MR. SARGENT: This is before, sir.

THE COURT: All right.

THE WITNESS: I assisted him in training recruits in the Buffalo Police Academy in Human Relations. The State mandated forty hours of Human Relations training, and I assisted Father Curry in this capacity. We also did work in the community. From a human relations vantage point, we handled community tension problems. We counseled, family counseling, and we worked with the youth, and we worked with senior citizens and various aspects of city life.

Q And you are also active in the church in the community, is that correct?

A Yes, I am. I am a member of the Board of Directors of St. Phillips Episcopal Community Center.

Q Officer Wright, prior to this charge, were you ever

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charged for any misconduct in all the time you were a member of the Police Department?

A No -- I am proud to say.

Q About May 20th of last year, you were served with a subpoena from the U. S. Attorney's Office, is that correct?

A That's correct.

Q When you received the subpoena, did you seek any legal advice or legal representative from the Police Benevolent Association?

A No, I did not. When I received the subpoena --

THE COURT: Just answer the question.

Counsel will frame another question. The answer to that question is, "No." Let's go on.

Q After you received the subpoena, did you have the occasion to call the U. S. Attorney's Office to inquire as to what the subpoena was all about?

A Yes, I did.

Q What did they tell you?

A They told me --

THE COURT: First, who did you talk with?

A I don't remember who I talked to over the phone, but I asked what was the subpoena about, and I was instructed that it was concerning an accident that I had while I was on duty, and I testified before the Grand Jury on that

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behalf.

Q Relative to the accident?

A Relative to the accident, yes.

Q So when you appeared on May 20th, you did not have an attorney with you, is that correct?

A No, I did not feel the need for an attorney, to testify to an accident that I had wrote a report on.

Q When you appeared before the Grand Jury and Mr. Burns, who is sitting at this table, asked you several questions, did you tell the Grand Jury everything, to the best of your recollection concerning the accident in January of 1972?

A About three and a half years had transpired until the time I was called to the Grand Jury and the time the incident took place, and considering that I didn't have any notes or any reports --

MR. BURNS: I object. This is not responsive.

THE COURT: It is not responsive.

Please just answer your attorney's questions.

THE WITNESS: Repeat the question.

(Last question read.)

THE WITNESS: Yes, to the best of my recollection.

Q Did you attempt to cooperate with Mr. Burns when you couldn't remember certain facts that he asked about?

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A Yes, I did. I told him where he could get the information from, you know.

Q Did he ask you about the fact as to whether you lost any time? Did you direct him to where the records could be found?

A I didn't, but I'm sure I answered that there was a record kept of it. Another thing, when he asked me about the accident report, I again indicated there was a record of the accident report, and I believe when he asked me about the surgeon's report, I told him there was a report of that accident.

Q Could you tell us, please, where is the police surgeon's office?

A The police surgeon's office -- well, there are two different offices. There are two police surgeons in the City of Buffalo.

THE COURT: I think the question is being asked with respect to 1972, is that right?

MR. SARGENT: That's correct. In other words, the surgeon who was the police surgeon. Then is it correct that his office would be over at the Police Headquarters?

A No. He had his own private office, but the records are kept at Police Headquarters.

Q The records are kept there?

Conference at Side Bar.

A Yes.

Q And the records as to any lost time, is that kept in the Administrator's Office across the street in the Police Headquarters building?

A In Mr. Nowadly's office.

Q Is the accident report that you were asked about, is that kept over in the Police Headquarters building across the street?

A Yes.

Q Officer Wright, you heard some testimony prior to today from the Government agent, the Postal Inspector Harm, who testified that he believed that you were not telling the truth to the Grand Jury based on the police accident report. Do you remember his testimony to that effect?

A Yes, I do.

THE COURT: Will counsel approach the side bar?

(At the side bar.)

THE COURT: Did Harm really testify to that?

MR. SARGENT: I asked Harm if he had, after reviewing the file, believed that the defendant was not telling the truth. He said, "Yes." I asked him what was his basis for that, and he said, "The accident report."

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THE COURT: I don't remember that, but
if that is your memory, you can proceed on it.

(In open court.)

DIRECT EXAMINATION CONTINUED

BY MR. SARGENT:

Q I'm going to show you Government's Exhibit 6 introduced
in evidence, part of the file, and I will ask you to
identify this document.

A What it says?

Q Yes.

A This is the accident report on date of 1-24-72, "Time:
9:14 p.m." CD No. 14582.

Q Could you tell us where this report came from?

A The procedure is that the officer at the scene of the
accident takes a handwritten report, and then it is
turned into a precinct, and the desk lieutenant types it
up for the permanent records the same night.

Q Could you tell us from that accident report who would have
filled out the handwritten report where that came from?

A Right here it indicates, "Report taken by William G. Wright.
Date: 1-24-72," at 9:15 p.m.

Q Does the report show that anyone was injured?

A Yes. The report indicates, "Richard C. Marvin. Address:
77 Greeley Street. Age: ^A42. Male. Nature of Injuries:
Head and neck. Taken to Sisters Hospital by wife."

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Q If the accident resulted in any injuries to yourself and you were merely taken to the hospital, would that have been indicated by the report?

A Yes, it would have.

Q Is it safe to conclude, in other words, based on your procedures in filling out reports, since your name is not on that report, that you would not have sustained any serious injuries, is that correct?

A That is correct.

Q And if you went to the doctor two days after the accident, that could not show on the accident report --

MR. BURNS: Your Honor, I object to the leading question.

THE COURT: It is argumentative. I don't so much mind that, but it is also leading.

MR. SARGENT: It is quite obvious that the accident report can't show something that happened two days later.

THE COURT: I think every juror knows that. Let's go on to something else.

C24

Q When you testified before the Grand Jury and you were asked if you were injured in the accident, and you responded, do you recall what you said?

A I testified that I didn't remember any serious injury.

Q And the Grand Jury also asked you, "How many times did you

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see the police surgeon?"

And do you remember how that question was answered?

A I testified that I didn't remember how many times I seen the police surgeon or if, in fact, I did see a police surgeon.

Q I'm going to show you Government's Exhibit 4, which was introduced in evidence, and ask you to read from Page 24, Line 16, please.

A "I don't remember."

MR. BURNS: I object unless there is a foundation.

THE COURT: Sustained. I thought he was asking him to read it to himself.

Are you asking him to read it to himself as a foundation of the next question?

MR. SARGENT: Yes, that's correct.

THE COURT: All right.

Q I would like to repeat, then, the question. The Grand Jury also asked you, "How many times did you see the police surgeon?"

THE COURT: What is the question, whether the Grand Jury asked him that?

MR. SARGENT: Yes, that's correct.

THE WITNESS: Yes, they did.

Q Do you recall how you answered it?

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A "I don't remember. I don't remember even seeing the police surgeon. I'm sure he would have a record of it, though."

Q I show you Page 24, Line 20 --

THE COURT: Have you exhausted his recollection as to what he told the Grand Jury?

MR. SARGENT: No.

THE COURT: Then he shouldn't be referring to the Exhibit. The only purpose of the Exhibit is to refresh his recollection. The Exhibit is already in evidence, and it has already been read once in this trial, and if you want to read from it during the summation, you may do so, and also so may Mr. Burns. But as far as reading from the Exhibit when he hasn't exhausted his recollection is not necessary.

Q Do you recall being asked who told you to go to the doctor?

A Yes.

Q Do you recall your answer?

A Yes. I answered that I didn't remember and that it must have been Brinkworth or Marvin that told me, because I didn't know the doctor, and I still don't know the doctor.

Q Do you remember being asked, "Why did you see Mr. Brinkworth?"

A Yes.

Q And do you remember your response?

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A I stated that I didn't remember, that it must have been because Marvin was seeing him.

Q Officer Wright, do you believe that you did anything illegal or unlawful because you visited the doctor upon Mr. Brinkworth's office recommendation for treatment of what can be described as minor injuries?

MR. BURNS: Your Honor, I object.

THE COURT: Sustained.

Q Your recollection is that your injuries were minor, is that correct?

A That's correct.

Q And you testified that you recall going to a doctor at least once, but anything after that you couldn't recall, is that correct?

MR. BURNS: I object to the leading question.

THE COURT: It is leading.

Q Officer Wright, do you recall receiving any money from the accident claim?

A No. I didn't receive anything.

Q And do you recall why, or were you told why you didn't receive any money from your claim?

A I was told because Brinkworth let the Statute of Limitations run out on the case.

Q Do you consider Mr. Brinkworth a friend?

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A No. My only contact with Mr. Brinkworth has been as a police officer in court.

Q And as a police officer sometimes testifying in court, that is what you are referring to?

A Right, when I seen him in court. He might be defending a particular person.

Q Is there any reason for this charge that you knowingly and willfully falsely testified relative to the Grand Jurors' investigation of attorney Brinkworth?

MR. BURNS: Objection.

THE COURT: Sustained as to form.

Q Would there be any motive that you would have to testify falsely concerning an investigation of attorney Brinkworth?

MR. BURNS: I object to that also.

THE COURT: I will let him answer as to that.

A No. There is no motive for me to testify falsely on behalf of Brinkworth or anybody else. I don't even know Brinkworth, and throughout -- may I go on?

MR. BURNS: If there is a question, I don't mind, but I think he has answered the question.

THE COURT: Yes. Don't volunteer the information.

I will let the answer stand so far as

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it is given.

Q Did you feel in the Grand Jury that Mr. Burns was intimidating you or harassing you or badgering you?

A Yes.

MR. BURNS: I will object to that,
Your Honor.

THE COURT: Overruled. I will let
the answer stand. Yes, that is enough of an
answer. Don't volunteer information. It is
not in your interests nor the Court's.

MR. SARGENT: Thank you, Your Honor.

Q Do you recall how many times Mr. Burns asked, "How many
times did you see the doctor?"

MR. BURNS: I object, Your Honor.

THE COURT: Isn't it all in the record?

All right, I will let him answer.

A Well, yes, he asked me nineteen times how many times I
visited the doctor.

THE COURT: It was a different question
every time. He asked you, "Was it twenty times?
Was it thirty times?"

That is what he was asking, wasn't it?

MR. SARGENT: That is fine.

Q Do you recall answering when Mr. Burns asked you, "Did
you see the doctor a hundred times?"

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A Yes. I answered that I know I saw the doctor one time, and I didn't remember seeing him any other times after that. And I felt it was my duty and my right not to speculate on whether I saw the doctor ten times or a hundred times.

Q Officer Wright, isn't it a fact that Mr. Burns advised you of the seriousness of a perjury indictment and, in fact, stated that he believed that by your answers you were committing perjury?

MR. BURNS: That is obviously leading, also, and I object, Your Honor.

THE COURT: It is a two- part question. It ought to be separated, but he may be asked whether Mr. Burns told him on or off the record that in Mr. Burns' opinion, he was not telling the truth.

Q The first part of the question, Officer Wright. Isn't it a fact that Mr. Burns advised you of the seriousness of a perjury indictment?

A Yes.

THE COURT: Did he do this on the record in the Grand Jury, or did he do it outside?

A No. It was on the record, Your Honor.

Q Is it on the record that he stated that he thought you were giving false testimony?

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A He said he believed that my testimony was incredible and unbelievable.

Q Did Mr. Burns give you the opportunity to change your testimony?

A Yes, on two occasions.

THE COURT: On two occasions?

A On the two occasions that he said my testimony was incredible and unbelievable. Well, the first part of the question he said, "I feel that your testimony is incredible and unbelievable. Do you want to change your testimony?"

Then later on he said almost completely the same thing, and I told him both times, "I am answering the questions to the best of my recollection now."

Q And after that again did he advise you of the seriousness of a perjury Indictment?

A Yes, he did. I answered, "As a police officer, I know the seriousness of a perjury Indictment."

MR. SARGENT: I have no further questions.

THE COURT: Mr. Burns, you may cross-examine.

CROSS EXAMINATION

BY MR. BURNS:

Q Mr. Wright, you are an experienced police officer, are you not?

W. G. Wright, for Deft., Cross.

A Yes.

Q You have been with the Police Department since 1970?

A Yes, sir.

Q During the period of time your duties have included making out a number of reports, isn't that correct?

A Yes.

Q After making out those reports, you also then are required to testify, isn't that also true?

A To certain reports.

Q Certain things you witnessed and certain things you did during the course of your duties?

A Yes, sir.

Q You testified in various courts in this community, have you not?

A Yes, sir.

Q What are some of those courts?

A I testified in Family Court, City Court, County Court, and I also testified in Federal Court.

Q So by the time you testified before the Grand Jury, the Federal Grand Jury on May 20, 1975, you had considerable experience, had you not, in giving testimony under oath?

MR. SARGENT: I object to the form of the question.

THE COURT: I will overrule it.

THE WITNESS: Shall I answer?

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W. G. Wright, for Deft., Cross.

THE COURT: Yes, you may answer.

THE WITNESS: I had some experience.

I wouldn't say "considerable experience."

Q Your duties required you to testify in various courts, did they not?

MR. SARGENT: It is the same question.

THE COURT: He has already told you.

It is repetitious, Mr. Burns.

Q When you received the subpoena to testify before the Federal Grand Jury, you made a telephone call, did you not, to find out what the subpoena was all about?

A Yes, I did.

Q You found out, did you not, that the subpoena required you to testify about an automobile accident claim, is that right?

A I was told it was concerning an accident that I was involved with.

Q And the only accident that you had been in involving an automobile accident claim was the one that you had on duty on January 24, 1972, isn't that correct?

A I believe so.

Q So when you came to testify before the Grand Jury, you knew, did you not, that the Grand Jury was going to be asking you about that automobile accident and the claim that resulted from the accident?

W. G. Wright, for Deft., Cross.

- A No. I knew it was going to be about the accident. I didn't know anything about the claim. They just told me it was an automobile accident.
- Q And you had a claim pending at that time, did you not, regarding supposed injuries you had?
- A I believe at the time I didn't know, but I did have a claim.
- Q At the time you received this subpoena, you took some further action, didn't you, before coming in to testify?
- A Well, like I testified, I always try to get in touch with the District Attorney or the Federal Attorney prior to going into any type of situation to find out the facts.
- Q Did you get in touch with the Assistant United States Attorney or anyone else in the United States Attorney's Office and ask to sit down and discuss this claim before you testified?

MR. SARGENT: Your Honor, the question was already asked.

THE COURT: That doesn't prevent it, but it is a two-part question.

MR. BURNS: I will break it up. I'm sorry, Your Honor.

- Q Did you, in fact, contact an Assistant United States Attorney or someone else in the United States Attorney's Office regarding what your testimony would be?

W. G. Wright, for Deft., Cross.

- A I called the U. S. Attorney's Office, and they told me that I was required to appear as a witness to give testimony concerning an accident on this particular date, and that is all the information I got from the Federal Attorney's Office.

THE COURT: They gave you the date of the accident?

- A No, they didn't.

- Q Then you felt, I take it, that you did not need to discuss the accident in any detail before going into the Grand Jury, is that correct?

MR. SARGENT: I object to the form of the question.

THE COURT: Overruled.

(Last question read.)

THE WITNESS: I felt that something was needed, but I felt the Federal Attorney would contact me prior to my testimony, because the District Attorney usually contacts us prior to our testimony.

- Q Did you tell the District Attorney, or the Federal Attorney, that you wanted to discuss this case before you went into the Grand Jury?

- A When I went down to the Federal Office, they took me right into the Grand Jury Room.

W. G. Wright, for Deft., Cross.

Q Did you ask to refer to any notes or any other records that you had regarding the accident?

A Did I ask to refer to any notes during the line of questioning?

I believe I did ask, you know, I did allude to the fact that there were reports that I didn't know -- you know, I couldn't --

Q But you never asked to refresh your recollection by looking at any notes, did you?

A Yes, I believe I did.

Q Would you please look at Government's Exhibit 4 and tell me when you did that?

(Government's Exhibit 4 handed to the witness.)

A Well, I am just looking at the beginning of this, because if I had, it would have been in the beginning more so than in the end, and I didn't ask for any information. I mean, I didn't ask for any notes or reports, and none were offered.

Q Did you at any time during your Grand Jury testimony tell the Grand Jurors or the Assistant United States Attorney that you were unable to testify any more completely, because you didn't have any notes?

A No. At the time I was testifying to the best of my recollection, and the prosecutor, yourself, became very belliger-

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ant towards me. There came a time that I thought I was on trial, that I was not there as a witness, and at that time I think I became very apprehensive.

Q You became "apprehensive"?

A During the questioning, because of the line of questioning.

THE COURT: What was there about the line of questioning that made you apprehensive?

A When he would ask me a question, and I said, "Well, you know, I am trying to remember. I don't recall."

And then he would ask me, "Why do you take so long?"

I said, "I am trying to remember."

And then I said I didn't recall specific dates like he asked me, about the specific date of the accident. I wasn't quite sure of the specific date of the accident. He said, "Was it January?" Or whatever the date was. I wasn't quite sure of the specific date, so I answered, "I am not sure."

Then he indicated the date, and then he went on, and then when he asked me nineteen times how many times I saw the doctor, it was evident that he thought I was lying, and I felt like he was intimidating me throughout the whole Grand Jury indictment. I felt like I was on trial.

Q Would you look at Government's Exhibit 4, the transcript of your testimony, and find only one example in here where

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you told the Grand Jury, "I am trying to remember."

(Government's Exhibit 4 handed to
the witness.)

MR. SARGENT: Your Honor, I don't really
see the relevance of the question.

THE COURT: Overruled.

THE WITNESS: Do you want me to read
from it?

Q Tell me where the reference is?

A On Page 27, it reads:

"THE FOREMAN: Mr. Wright, if you don't remember,
why did you have to think about it?

"THE WITNESS: To see if I could remember."

Q Are there any examples there where you told the Grand
Jury that you were trying to remember how many times you
had visited the doctor?

A Not particularly that question. When I said that I was
trying to remember, I was trying to remember all the de-
tails of the whole Grand Jury investigation, every ques-
tion they asked me. That is what I was referring to.

Q Every question that was asked you, you tried to remember?

A That is right. I took my time, and I tried to remember.

Q So when you testified before the Grand Jury, you took
your time after every question asked, and you understood
the questions that were asked of you?

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A Yes.

Q And you were trying to give an honest answer, is that correct?

A I answered to the best of my recollection.

Q Before you went into the Grand Jury Room, you contacted Kevin Brinkworth, did you not?

A I called him on the telephone.

Q Why did you call him on the telephone?

A To find out what it was all about.

Q Was that after you had talked to someone in the U. S. Attorney's Office?

A No. I think I called him before.

Q Why would you call him before if you have no idea what was going on?

MR. SARGENT: The question is not relevant.

THE COURT: It may be relevant, but it is argumentative. Reframe the question.

Q What did you talk to Mr. Brinkworth about?

A Mr. Brinkworth was my lawyer on the accident case, and I called him, and I said, "I got a subpoena. Do you know anything about it, concerning an accident case?"

Q What did Mr. Brinkworth say?

A Mr. Brinkworth said he didn't know anything about it, and, you know, to tell what I know.

W. G. Wright, for Deft., Cross.

Q And at that time that you received the subpoena, you were aware, were you not, that Mr. Brinkworth, himself, was under investigation because of so many accident claims he had filed?

A At the time that I received the subpoena?

Q Yes.

A I don't remember if I was aware of that or not.

Q It was a matter of common knowledge, was it not, over a year ago this investigation was proceeding?

A Common knowledge? No. I don't get the paper at home, so, you know, I don't read the news.

Q When you talked to Mr. Brinkworth, did you have any idea that the investigation concerned your accident claim?

A I had a vague idea it might.

Q What was the basis of your "vague idea"?

A Well, since all the other accident cases that I had, and I have had a few other accident cases while I was working, minor damage, they would dispose of it in court, as far as I know of, and this was the only one that wasn't disposed of in court or anything, so I just assumed that this was one of the accident cases. I testified in the Grand Jury that I called Mr. Brinkworth periodically to ascertain, you know, what was the position of the case.

Q You were interested in the disposition of the case, is that correct?

W. G. Wright, for Deft., Cross.

A Whether it was pending, if the case was still pending.
I didn't know if I had to testify or not concerning the case.

Q What did you understand was actually pending? What kind of a claim or a lawsuit did you have pending at the time you testified before the Grand Jury?

A As I answered to the Grand Jury, I don't know. I am not a lawyer. I don't know what type of claim it was.

Q Do you know whether or not it was a claim for money?

A I suspect it was.

Q Why did you retain Kevin Brinkworth?

A As I said before, he was a friend of Marvin's.

Q For what purpose did you retain Kevin Brinkworth?

A The only reason I retained Mr. Kevin Brinkworth was because he was a friend of Marvin, and Marvin had retained him.

Q Why did you need a lawyer?

A Why did I need a lawyer? When we have an accident within the Police Department, we are liable for lawsuits. As a matter of fact, they told us that we can be sued for lawsuits and damages, so if you have an accident and if you feel you know that there is some liability involved, or you might be sued, it is good to retain a lawyer.

Q You mean if you are driving a Buffalo City Police car, and you were involved in an automobile accident, it is your understanding of the law that you would have to retain a

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private attorney to represent you?

A Sure, if it proves in some way that maybe the police officer was at fault, and then you would have to have a lawyer, because the City would not accept the liability for that.

Q Was it your understanding that the City also had lawyers to represent the Police Department, the police officer.

MR. SARGENT: I really don't see where this line of questioning is leading.

THE COURT: I take it that it is bearing on the credibility of the witness. Objection is overruled.

Reframe the question.

Q At the time you went to see Mr. Brinkworth, did you know that the City had attorneys that represented the Police Department and police officers that are involved in an automobile accident?

MR. SARGENT: I object to the form of the question, because it hasn't been established that he did go to see Mr. Brinkworth.

THE COURT: Well, he may ask if he did go to see Mr. Brinkworth.

Q Did you see Mr. Brinkworth?

A I retained Mr. Brinkworth.

Q Let me ask again. Did you see Mr. Brinkworth?

A When?

W. G. Wright, for Deft., Cross.

THE COURT: At any time.

A At any time?

Q At any time after the accident in January, 1972?

A Yes.

Q How soon after the accident?

A I believe he came to the precinct house, Precinct 6. He came there maybe two or three or four days later.

Q Have you ever physically seen Mr. Brinkworth or spoken to him in person?

A Yes.

Q And your recollection is that you saw him within a few days after the accident at the station house?

A I believe it was Brinkworth. I'm not sure who came to the precinct house with the retainer -- I mean to hire the lawyer.

Q What is a retainer?

A To hire the lawyer for the particular case.

Q And you hired him on a contingency fee basis, is that correct?

MR. SARGENT: I object.

THE COURT: Overruled.

THE WITNESS: I don't understand.

Q Do you know what a contingency fee is?

A No.

THE COURT: Did you hire him on the

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basis whereby Mr. Brinkworth's fee was to be measured a percentage of the amount that he recovered for you in the accident claim?

A We never discussed any payment or anything. He said he would get back to me.

Q Did you ever sign any papers regarding how Mr. Brinkworth would be paid?

A The only thing I remember signing is a retainer slip.

Q And what was your understanding of this retainer slip?

A That my lawyer represented me in this case in the event I was to be sued or anything of that nature, you know. That is the general consensus.

Q Do you recall making any agreement as far as paying Mr. Brinkworth for these services?

A No. I don't remember making any financial agreement with Mr. Brinkworth whatsoever.

Q So was it your understanding that Mr. Brinkworth would pursue a claim on your behalf against other people?

A Was it my understanding that he would pursue a claim on my behalf against other people?

MR. SARGENT: I object to the question, being immaterial.

THE COURT: Overruled.

This is his understanding in 1972 that you are asking?

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MR. BURNS: Yes, Your Honor.

THE WITNESS: Would you repeat that?

THE COURT: Reframe the question, please.

- Q At the time you retained Mr. Brinkworth to represent you, was it your understanding that he was going to take some action on your behalf to recover a certain amount of money from somebody else as a result of the automobile accident?
- A At the time I signed the retainer, I didn't know if there was any money involved. At the time that I signed the retainer slip, I wasn't aware of any money that I was going to receive, or whatever, in 1972.
- Q So that your purpose for seeing Mr. Brinkworth had nothing whatsoever to do in filing a claim or making some money yourself from the accident, is that correct?
- A When I retained Mr. Brinkworth, I didn't know whether there was any money involved in that situation whatsoever. I retained him at this point primarily just in case I was sued, because the girl in the accident was highly angry at the time, and she said she was going to sue and so forth and so on. So about two or three days after the accident Marvin had already signed up with Mr. Brinkworth, so I signed the retainer also.
- Q Were you aware at that time that Mr. Marvin had claimed to have some injuries from the accident?
- A Yes. At the time of the accident he claimed injuries.

Q What did you understand the reason for Mr. Marvin to go and see Mr. Brinkworth?

A He didn't tell me. I have no recollection what was in Mr. Marvin's thinking at the time.

Q After you saw Mr. Brinkworth, or after you made some arrangements with him regarding this retainer slip, at that time did Mr. Brinkworth ask you about any injuries you had?

A No.

Q There was no discussion about any injuries, whether you had any injuries?

A No. I didn't remember any serious injuries.

Q You mean four days after the accident you didn't remember?

A I don't remember exactly how many days it was.

Q Were you, in fact, injured in any way in that automobile accident?

A I testified that I didn't remember any serious injuries.

Q I'm asking the question today. Were you injured in any way in that automobile accident?

A Was I injured? Any serious injuries? I don't remember any serious injuries that I had during that accident.

Q Do you remember any minor injuries?

A No, I don't remember any minor injuries.

Q Do you mean, then, that you didn't have any minor injuries either?

A I don't remember any minor injuries.

Q Do you recall going to see a doctor sometime after the accident in connection with the accident case?

A Yes, I did.

Q Why did you see the doctor?

A I didn't feel there was anything wrong to go and see a doctor for minor injuries or preventive treatment.

Q Did you feel that you needed some treatment at that point?

A I don't remember whether it was minor injuries or not, but, you know, preventive treatment is always good. You never know. Sometimes you could have a whiplash, and it never shows up for six months later, or, you know, a head injury that doesn't show up immediately, you know.

Q Mr. Wright, according to a document found in Government's Exhibit 6, the insurance file that has been admitted in evidence, according to a medical report allegedly signed by John P. Mernan, Dr. Mernan states: "I first examined and treated Mr. Wright in my office on January 26, 1972."

Is that statement correct?

A I don't remember. I know I saw the doctor once. Other than that, I don't remember how many times I saw the doctor.

Q The report also states that he treated you for injuries which you sustained in an automobile accident on the above date, referring on top to January 24, 1972. Did you see him for treatment of injuries you received in the

W. G. Wright, for Deft., Cross.

accident?

A Like I said before, I don't remember receiving any serious injuries. I don't remember receiving any minor injuries in the accident.

Q Further recorded in the report, it says: "At the time of examination the following injuries were noted: (1) Sprain and strain of the cervical spine."

Do you recall any such injury?

A No, I don't.

Q "(2) Sprain and strain of the lumbar spine."

Do you recall any such injury?

A No. Like I said, I don't recall any.

Q "(3) Contusion of the upper left chest cage."

Do you recall any such injury?

A I don't know.

THE COURT: Do you know what a contusion is?

A No, I don't.

THE COURT: Reframe the question so the witness can give a responsive answer to it.

If you don't understand the question, say so.

Q Do you recall any back injuries?

A Resulting directly from the accident?

Q Yes.

W. G. Wright, for Deft., Cross.

A No, I don't.

Q Do you recall any injuries to the chest cage or the upper torso?

A No.

Q The report further states that you complained of headaches, pain, spasm and tenderness of the neck and upper left chest cage and lower back.

Do you recall ever making any such complaint?

A No.

THE COURT: Did you make any such complaint to Dr. Mernan?

A I don't remember whether I did or not. That was three and a half years ago.

Q Did you subsequently receive X-rays for any purpose in connection with this accident?

A Yes. I believe I did receive X-rays.

Q Do you recall where you received the X-rays?

A I'm not sure. I think it was at Millard Fillmore Hospital.

Q When you testified before the Grand Jury on May 20, 1975, at that time you could not recall whether you had been X-rayed, is that correct?

A That's correct.

MR. SARGENT: Your Honor, may I just interject here?

We have had a question as to "did he

W. G. Wright, for Deft., Cross.

recall?" Now the question wasn't asked, "Do you recall back in '72?"

Someone testified here where he was X-rayed, the X-rays, the hospital --

THE COURT: If that is an objection, it is overruled.

MR. BURNS: I believe the witness answered anyway.

THE COURT: Please frame the next question.

- Q Do you have a recollection today in your own memory, separate and apart from any document that you may have looked at, do you have a recollection today in your own mind of going to a hospital or to somebody for X-rays after this accident?
- A After listening to the testimony of the witness, yes. I remember going to a hospital for X-rays after going to see the doctor.
- Q How soon after you saw the doctor did you go to have the X-rays?
- A I couldn't answer. I don't remember.
- Q Was it within a week?
- A I don't remember when I went to the hospital after seeing the doctor. I really don't remember.
- Q Could you estimate the period of time between the doctor's

W. G. Wright, for Deft., Cross.

visit and the hospital?

A I would rather not speculate on it.

MR. BURNS: Your Honor, if I may, I
don't think that is a proper basis --

THE COURT: He can answer "yes" or
"no," whether he could give an estimate.

Q You can give no estimate at all?

A No, I couldn't give an estimate.

Q Could you give an estimate of the maximum number of days
that elapsed between the two events?

A No, I couldn't give an estimate.

Q Do you recall how you got this particular doctor's name,
to visit?

A Yes. As I recall, someone came in Precinct 6, either it
was Brinkworth or Marvin, that told me to go see this
doctor. Well, one of them told me to go and see the
doctor because I didn't know the doctor. I never met
the doctor, so one of them directed me, or somebody in
Brinkworth's office directed me to go see the doctor.

Q You at some point talked to somebody at Brinkworth's office
shortly after the accident?

A That was when they came to the station with the retainer
slip.

Q Do you recall how soon after speaking with Mr. Brinkworth
that you actually went to see the doctor?

W. G. Wright, for Deft., Cross.

A No. I don't know exactly, you know, the time lapse in there, whether it was a week later or a couple of days later. I don't remember.

Q Are you able to estimate?

A No. Again, I don't care to estimate on that.

THE COURT: It isn't whether you care to give an estimate. You can say, "Yes, I can give an estimate," or you can say, "No, I can't give an estimate."

THE WITNESS: No, I cannot give an estimate.

THE COURT: All right, the answer will stand.

Go on to the next question.

Q Do you recall where the doctor's office was located at the time you went to see him?

A No, I don't recall.

Q Do you recall the area of the city?

A I believe it was somewhere in North Buffalo.

Q What happened during your office visit to the doctor?

A I don't know if I was in his office or not. I was in his home. I don't know if his home was his office or not, and I remember there was a doctor there, and I remember he was a white doctor, and he was in his bathrobe, and I was sitting in the living room.

W. G. Wright, for Deft., Cross.

Q What else happened?

A That is all I remember.

Q Do you recall how he was dressed?

A He was in his bathrobe.

Q Do you recall if it was in the living area of the house?

A It appeared to be more a living area than an office, than a doctor's office.

Q Did you have a conversation with him?

A I was there for about ten minutes, I believe.

Q Did you have a conversation with him?

A Yes.

Q What was the conversation?

A I don't remember.

Q Do you recall discussing any injuries you had?

A I don't remember.

Q Do you recall discussing the need for X-rays?

A No.

Q Do you recall if the doctor gave you medication of any kind?

A No. I don't remember any medication.

Q Did he examine you?

A Yes, I believe he did. I don't know the extent of the examination, but I believe he did.

Q What portion of the body did he examine?

A I didn't get undressed for the examination. I believe

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he felt around my head and neck. That is all I remember.

Q Did you have any head or neck injuries?

A No, I don't remember any.

Q After you saw the doctor on this one occasion, did you make any appointments to see him again?

A I don't remember if I did or not.

Q Did you, in fact, go to see him on another occasion?

A I know I saw him the ~~c~~ time. Other than that, I don't remember.

Q Do you recall going to see the doctor more than ten times?

A No.

THE COURT: Ask him, "Did you see the doctor more than ten times?" If he doesn't recall, he knows very well he can tell you that.

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Q Did you see the doctor more than ten times?

A I don't remember.

Q Did you see the doctor more than twenty times?

A I don't remember seeing the doctor more than twenty times.

Q Did you see the doctor more than forty times?

A I don't remember seeing the doctor more than forty times.

Q Do you know if you went to see the doctor more than one hundred times?

A Do I know if I seen the doctor more than one hundred times?

Q That's right.

A I don't think I saw the doctor more than a hundred times.

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I don't think I saw the doctor a hundred times.

Q Did you testify to that fact before the Grand Jury?

A I testified before the Grand Jury that I did not want to speculate on that point, because I wasn't quite sure how many times I did see the doctor.

Q Are you sure today that you did not see the doctor more than one hundred times?

A Yes.

Q Were you sure in your own mind on May 20, 1975, that you had not seen the doctor more than one hundred times?

A I wasn't positive. I didn't know how many times I saw the doctor.

Q What has changed your mind between May 20, 1975, and today?

A Going over all the documents.

Q What document indicated that you were not there one hundred times?

A I haven't seen any documents that I was there a hundred times. If I had been there a hundred times, I would certainly know the doctor. You know, I hadn't been there a hundred times.

Q After the accident happened on January 24th, '72, did you take any time off from work because of injuries you had?

A I don't remember ever missing any days from work.

Q Did you take any time from work in order to see the doctor?

A I don't remember taking the time off from work. I saw

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him during the morning, and I was working the four to twelve tour of duty.

Q You recall seeing the doctor in the morning?

A It was during the morning hours.

Q Did you ever speak with Mr. Brinkworth regarding your employment status after the accident, that is, whether you were working or not working?

A Did I ever remember that? Is that what you asked?

Q Have you ever gone to Mr. Brinkworth after the accident about losing time from work because of the accident?

A No, I don't remember ever discussing that with Mr. Brinkworth.

Q I think you testified earlier that you talked to Mr. Brinkworth periodically, once in awhile, about the matter that he was representing you on?

A About every six months I would call.

Q And what were you checking on with him?

A Well, I had issued a summons in that matter to the other driver, and the case was pending. I hadn't heard anything about it, and as a police officer, we sort of keep up with cases that are pending in court, because we might be asked to testify in court.

Q So in order to check up on this summons you issued, you went to your private attorney, is that correct?

A I went to an attorney to check and find out where the case was at. After I had retained Mr. Brinkworth, and he

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sent me to the doctor and he told me where to go to the doctor, and so forth and so on, and then I became aware of the fact that there was a claim involved.

Q What kind of claim?

A For money.

Q Whose claim?

A Mine.

Q When did you learn that?

A Sometime after the accident happened.

Q Did you find that out before you testified before the Grand Jury?

A Before I testified?

Q Yes.

A Yes.

Q What kind of a claim was this?

A I don't know. I don't know what kind of claim it was.

Q Did you suffer any property damage as a result of the automobile accident?

A Personal property damage?

Q Yes.

A No. I was in the police car.

Q Did you have to pay any money for the repair of the police car?

A No.

Q And you testified you don't recall missing any time from

W. G. Wright, for Deft., Cross.

work?

MR. SARGENT: Your Honor, we keep hearing the same questions over and over.

THE COURT: I will allow it on this particular occasion, but we should not be repetitious.

Q Just this one question for background. And you do not recall missing any time from work, is that correct?

A I don't recall missing any time from work. That is correct.

THE COURT: These "I don't recall" questions are bad form, Mr. Burns, and I told you that once already. The question is not what he recalls now. The question is, "did he." If he doesn't recall, he will tell you.

As I understand it, you did not lose any time from work?

A That's correct.

THE COURT: All right. Let's go on to something else.

Q What possible claim did you have for any damages?

MR. SARGENT: It is the same question, Your Honor. You have heard this question three times.

THE COURT: It isn't really the same question. He may be asked what his claim for

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damages was. The use of the word "possible" in the question is inappropriate. He may be asked to tell what his claim for damages is for.

MR. SARGENT: I object, Your Honor.

THE COURT: If he doesn't know, he will tell us that.

THE WITNESS: I don't know.

Q When you testified before the Grand Jury, a number of questions were asked of you by me, isn't that correct?

A That's correct.

Q And a number of questions were also asked by Grand Jurors, is that correct?

THE COURT: Individual members of the Grand Jury?

MR. BURNS: Yes.

THE COURT: Do you understand the question?

A Yes.

THE COURT: Is that true, that the individual members of the Grand Jury asked you questions?

A Yes, a few of them did.

Q In response to Mr. Sargent's questions, you said that you thought some of the questions, or the questioner was either harassing or intimidating you?

W. G. Wright, for Deft., Cross.

MR. SARGENT: I object to the form of the question. That is not what he said.

THE COURT: I will sustain the objection.

Q Mr. Wright, would you look at Government's Exhibit 4, the transcript of your testimony, and will you pick out the question that you believe to be intimidating or harassing you in some manner?

A I believe I testified that the whole concept of the questioning, the way of questioning, you know, these words are put down and they are recorded, but it doesn't give the feeling, the context of the Grand Jury investigation at that particular time. I don't think I said there was any one particular question that led me to believe that. I thought I testified to the fact that, you know, I felt that I was being badgered and intimidated throughout the whole testimony.

Q What was the basis for your feeling that way?

A Your method of questioning.

Q What about the questions themselves?

A Well, if I answered a question that you didn't particularly like, you would snicker, and, you know, make remarks like, "I think that your testimony is incredible."

And three or four times you reminded me that I was under oath. And I reminded you that I know that I was

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under oath, and I am testifying to the best of my recollection.

Q Were there any questions asked of you which you believed to be intimidating?

MR. SARGENT: Your Honor, again he asked the same question that was just answered.

THE COURT: It is not clear to me. I think the witness can answer, "Were there any particular questions other than what you told us that you think were intimidating?"

A No. The question in itself wasn't intimidating, but the method of asking the question was intimidating.

Q Apart from anything else you told us, was there any questions you believed were harassing, any particular questions you felt were harassing you in some manner?

A Then, again, it was not the question itself. It was the method of asking the question.

Q Was the answer to that question "no"?

A It wasn't the question. I felt it was the method of asking the question.

THE COURT: What was there about the method of asking the question?

A Like when he would ask a question and he didn't feel like I was telling the truth, he would snicker and turn his head, and at the particular time he instructed the Jury

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that my testimony was incredible and unbelievable, and even a third of the way through the whole transcript, he instructed the jury this.

Q I will leave this area after this one question.

Is there anything in the transcript itself that you can point to, a question which you believed to be either intimidating or harassment or badgering in some fashion, any particular question?

A Specifically, the question itself was all right. It was just the method of asking the question, and your response to my answers that I was intimidated and badgered at this particular point.

Q Mr. Wright, do you believe that when testifying under oath that you have an absolute and lawful right not to speculate?

A I believe I do.

Q You also believe that you have an absolute and lawful right not to give estimates if, in fact, you are able to give estimates?

MR. SARGENT: That is a two-part question, Your Honor.

THE COURT: I don't know that it really is two parts, but I think it is irrelevant. I will sustain the objection to it.

Q Mr. Wright, at the time you testified before the Grand Jury,

W. G. Wright, for Deft., Cross.

May 20th, 1975, you had talked to Kevin Brinkworth that very morning, is that correct?

A Yes. I believe I talked to him before I went to the Grand Jury.

Q At that time whatever your claim might have been, the claim on which Mr. Brinkworth was representing you, was not settled, was it?

A As far as I knew, it wasn't settled.

Q And at that time you had not obtained any money from Mr. Brinkworth or from an insurance company in settlement of the claim, isn't that correct?

A That's correct.

Q Was it also your understanding that you had a pending claim, that is, you did have a claim for some money damages as a result of the accident?

A Yes, that's correct.

Q And was it this claim that prompted you to contact Mr. Brinkworth periodically?

MR. SARGENT: Your Honor, this is the fourth time we have heard that question.

THE COURT: Well, it could be answered "yes" or "no."

THE WITNESS: Repeat that, please.

Q Was it this claim you had that Mr. Brinkworth was representing you on that prompted you to contact Mr. Brinkworth

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periodically?

A Yes.

Q And as a result of talking with him, or his office, periodically, were you aware of the amount of money that was being sought as damages for you?

A No.

Q Were you aware that any sum of money was being sought?

A No, not for me personally.

Q Mr. Wright, during the course of your testimony before the Grand Jury, do you recall that I advised you that if you wanted to change your testimony in any respect or modify it in any respect, that you had the right to do so?

A Yes.

Q Do you recall also after your Grand Jury appearance, outside of the Grand Jury Room that you were once again advised that if you wanted to change your testimony in any respect or add to it or modify it that you certainly had that right?

A Outside the Grand Jury Room?

THE COURT: After you were finished

he is talking about.

Q After you were finished?

A No, I don't recall it.

Q You don't recall it?

A I recall you saying, "I'm going to bring a perjury indict-

W. G. Wright, for Deft., Cross.

ment against you."

Q But you do recall in the Grand Jury that you advised that you could modify your testimony and change it in any way, is that right, sir?

A Yes.

Q Did you at any time between May 20, 1975, and today's date indicate that you wanted to change your testimony or modify it in any respect?

MR. SARGENT: I don't see how that question is relevant, Your Honor, after May 20th.

THE COURT: I don't think it is either.

I will sustain the objection.

Q At any time after your appearance before the Grand Jury on May 20th, did you indicate a willingness or intention to change your testimony in any respect?

A To who?

Q To anybody?

A Did I indicate a willingness to change my testimony?

Q Yes.

A No.

MR. BURNS: I have no further questions.

THE COURT: Is there any redirect examination?

MR. SARGENT: Could we take a short recess?

W. G. Wright, for Deft., Cross.

THE COURT: Well, in that case I will break for lunch, and we will resume a quarter to two.

Members of the jury, don't discuss the case. Keep an open mind, and we will resume the trial a quarter to two.

(A luncheon recess was taken at 12:30 p.m.)

W. G. Wright, for Deft., Re-direct.

Buffalo, New York

Tuesday, October 26, 1976

1:55 p.m.

(Trial resumed; jury present.)

W I L L I A M G . W R I G H T ,

the Defendant, called as a witness in his own behalf, being previously duly sworn, testified further as follows:

REDIRECT EXAMINATION

BY MR. SARGENT:

Q Officer Wright, do you recall during the examination by Mr. Burns the question was asked, "Had you, in fact, asked for any of the reports that you had referred to as the accident or the lost wage report?" Do you remember that question to you?

A Yes, I do.

Q And do you recall whether you answered the question or not?

A I recall that I didn't see in the beginning of the transcript any indication of that, just glancing through the first few pages of the transcript, not reading the entire transcript at that time.

Q Have we had an opportunity to review the entire transcript during the one-hour break?

A Yes, we did.

W. G. Wright, for Deft., Re-direct.

Q I show you the transcript, and do you recall when you were asked about the accident that you stated, "It is all in the accident report"?

Do you remember telling the Grand Jury that?

A Yes, I did.

Q Do you remember telling or asking the Grand Jury if they had a copy of the accident report?

A Yes, I did.

Q And was an accident report produced for you?

A No, it wasn't.

Q And you recall being asked during the questioning by the Grand Jury if you had lost any time from work?

A Yes, I do.

Q And do you remember telling the Grand Jury where they could find that?

A Yes, I did.

Q Could you just tell us what you recollect your answer was?

A May I see the transcript?

Q What did you tell the Grand Jury when they asked you about lost time?

A I said, "If that is what the City records say."

Q So you indicated that the answer could be found in the City records?

A That's correct.

Q And do you recall being asked whether you would perjure

yourself for Mr. Brinkworth?

A Yes, I do.

Q And do you recall what your answer was?

A That I wouldn't perjure myself for anyone.

Q You also were asked by Mr. Burns if there were any specific questions that you felt tended to intimidate you or harass you? Do you remember him asking you that?

A Yes.

Q Do you remember how you answered the question?

A I answered --

MR. BURNS: I'm going to object. I see no purpose --

THE COURT: How he answered this morning?

MR. BURNS: Yes.

THE COURT: I will sustain the objection to that.

Q You stated earlier that you felt Mr. Burns was intimidating you and harassing you, is that correct?

A That's correct.

Q Do you recall Mr. Burns asking you, "Do you know if you went to see him more than twenty times?" And "him" meaning the doctor.

A Yes.

Q Do you feel that question was intimidating you and harassing

W. G. Wright, for Deft., Re-direct.

you?

A The amount of times that question was asked me, I felt it was intimidating.

Q Do you recall being asked by Mr. Burns, "In other words, it could be more than twenty times?" Do you remember that question?

A That's correct.

Q And do you remember that that question intimidated you or harassed you?

A Yes.

THE COURT: I think there is a difference between being intimidated and being harassed. I think we ought to separate them. I know that Mr. Burns did not, but I think the witness put the two words together to begin with, and there is a big difference in life between being intimidated and between being harassed.

Go ahead.

Q Certainly. Let's explain, then. How were you using the words "intimidate" and "harass"?

A When I use the word "harass," I meant his way and method of questioning and as repetition of the questions. And when I say "intimidating," when he said that my testimony was incredible and unbelievable, and I felt that he was

W. G. Wright, for Deft., Re-direct.

threatening me at this point.

Q Do you remember being asked, "Well, did you see him more than forty times?"

A Yes, I do.

Q Do you remember your answer?

A I said that I didn't remember.

Q Then do you remember being asked right after that answer, "You mean it's possible that you actually went to see the doctor on forty times or more than that?"

Did you feel that that question was intimidating you?

A Yes, I did.

Q And then you answered, "I don't know, that's what I mean." Then he asked it again, "You aren't able to estimate anywhere between one and forty times?"

A I said, "I am unable to estimate."

Q Then the question came, "In other words, it could have been just one time?"

And you answered, "I don't know."

Then there is the question, "And then, again, it could have been forty times, is that correct?"

And you answered, "I don't know."

Then Mr. Burns said, "All right. Mr. Wright, I think you should be advised that the Grand Jury --"

MR. BURNS: I don't think this is a question. It seems to be argument and expla-

W. G. Wright, for Deft., Re-direct.
nation.

MR. SARGENT: We are reading from the transcript, and we are trying to get from the witness what were the questions that you asked him that he felt intimidated and harassed him. I think it is relevant.

THE COURT: Reframe the question.

Let's not argue over the form of the question.

Q Mr. Burns then asked you, "And then, again, it could have been forty times, is that correct?"

A That's correct.

Q Did you feel that question intimidated you?

A Yes, I did.

THE COURT: You say it "intimidated you." What do you mean by that? What do you mean when you use the word "intimidated"?

A Well, his method of questioning me was intimidating. He was questioning my honesty and sincerity and indicated that I was perjuring myself. He stipulated that a couple of times, you know, that I might be perjuring myself in my testimony, and I told him that I was testifying to the best of my recollection what I recollected.

THE COURT: What, if any, effect did these statements have to the effect that he didn't believe your answers have upon you?

W. G. Wright, for Deft., Re-direct.

A At the time of the Grand Jury investigation, I got the feeling that he asked the same question over and over again, and I answered the question the first time, and then later on, I told him I didn't care to speculate on the thing. He asked the same question.

Q Mr. Wright, what the Judge is asking is, did the feeling that you were getting from Mr. Burns cause you to refrain from being more cooperative as you went along in the transcript? In other words, you were attempting to cooperate when you first went into the Grand Jury Room, is that correct?

A I tried to cooperate to the best of my ability.

Q Then as the questions became repetitious based on the intimidation that you felt, you had a frame of mind that caused you to become less cooperative?

A That's correct.

THE COURT: You know he is not charged with being uncooperative. I think I ought to make that very clear, ladies and gentlemen. He is charged with knowingly giving false answers. He is not charged with being uncooperative. It is not a crime to be uncooperative in the context of this case.

Q Just one other things, Mr. Wright. The series of questions concluded with, "How about one hundred times, Mr.

W. G. Wright, for Deft., Re-cross.

Wright?" And do you recall how you answered that?

A I answered that I was unable to speculate how many times I went to see the doctor. I know I saw him one time. That is all I remember.

Q That is all you could remember, is that correct?

A That's correct.

MR. SARGENT: I have no further questions.

RECROSS EXAMINATION

BY MR. BURNS:

Q Mr. Wright, during the luncheon recess, did you have an opportunity to consult with your attorney?

A Yes, I did.

Q And did you consult with your attorney about certain questions that he asked you when you came back here on the stand, after lunch?

A Yes, we did.

Q Was it during that period of time that you and your attorney discussed what questions were going to be asked of you?

A Yes, we did.

Q Was it during that period of time after consulting with your attorney that you finally reached the conclusion that some specific questions were asked you before the Grand Jury?

W. G. Wright, for Deft., Re-cross.

MR. SARGENT: I object to the form of the question, Your Honor.

THE COURT: I will sustain the objection to the form of the question.

I have to state for the benefit of the jury that an accused person has a right to consult with his attorney. There is no question about that. He has a right to discuss with his attorney what questions will be asked during the trial.

Q Was it after your consultation with your attorney that you were able to then state what questions you believed were intimidating?

MR. SARGENT: I object to the form of the question.

THE COURT: Objection is overruled.

He can answer.

A It was after I read the transcript thoroughly, because I had the opportunity to read the transcript thoroughly in his office. I didn't read it up here.

Q You never read the transcript?

A I didn't read the transcript thoroughly through when you were questioning me the first time.

Q But you read it thoroughly through afterwards?

A We went back, and I read it many times.

D. Denny, for Deft., Direct.

Q Then you found the intimidating questions, is that correct?

A It could fit into the context, yes.

MR. BURNS: That is all.

THE COURT: Anything else?

MR. SARGENT: I have nothing further.

(Witness excused.)

D E N N I S D E N N Y,

called as a witness by the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Mr. Denny, what is your present occupation?

A I am a lawyer.

Q Where is your law office, please?

A 635 Ellicott Square Building.

Q Can you tell us what year it was that you graduated from
law school?

A 1966.

Q And what law school was that, sir?

A University of Buffalo.

Q I ask you, have you ever been disciplined or suspended
by the Erie County Bar Association?

A No.

Q Do you know an attorney, Kevin Brinkworth?

A Yes.

D. Denny, for Deft., Direct.

Q And can you tell us were you and Kevin ever associated in the same law practice?

A Yes, commencing about 1972, he and I shared space in an office where he had a connecting suite in the Ellicott Square Building.

THE COURT: Is that being associated in a law practice? Can't you answer his question, counsel? Either you were associated with Mr. Brinkworth, or you were not, "yes" or "no"?

A As a result of that, I did trial work for him.

Q So you started to answer the question that geographically, at least, you shared some space together?

A Yes.

THE COURT: And then you became acquainted and then he asked you to try specific cases for him, is that what happened?

A Yes, Your Honor.

Q Do you recall being asked by Mr. Brinkworth to take over an automobile accident claim for Police Officers William Wright and Richard Marvin?

A I recall him asking me to look at that file along with several others at the same time.

Q Can you tell us how do you recall in particular those two claims, and that being Officer Marvin and Officer Wright?

D. Denny, for Deft., Direct.

A Because this claim along with several others for various legal reasons had some procedural problems with them, and he asked me to look at it, and this is one of four or five claims that I looked at at the same time to see if there was anything that could be done to repair them.

Q What do you mean when you say Kevin Brinkworth asked you to see if you could do anything to repair them? What was the infirmity?

A There were various infirmities in these files. Some of them were precluded --

MR. BURNS: Your Honor, I think we are only concerned here with Mr. Wright's case, and I ask that the witness be confined to that particular case.

THE COURT: I think so.

Q What was the particular problem with Officer Wright and Officer Marvin's claim?

A The Statute of Limitations had run before the case had been put in suit. The Statute of Limitations had run, however, because the perfection of the service of the summons was imperfect.

Q I think possibly for simplicity's sake, are you saying that as a result of some legal procedures, that the Statute of Limitations had run, is that what you are saying?

A That's right. In other words, in a negligence case, you

D. Denny, for Deft., Direct.

have a three-year Statute of Limitations, which means that the case has to be sued within three years from the date of occurrence of the accident.

Q And that particular file of Marvin and Officer Wright, that file through some legal procedure was not able to be brought to its final conclusion in a court of law, is that correct?

A Yes. The problem was irretrievable.

Q And it was a legal problem, is that right?

A That's right. The case had been actually sued, what we call constituted service. In other words, the process server had gone three times to the defendant's home and finally had left a copy of the summons attached to the door, and the next procedure would be to file it in the court where the suit was laid, and that by filing it, I mean, filing the original summons and complaint, would commence the lawsuit together with the affidavit of service of the process service, and that has never been filed. As a result, there is a statutory time, thirty days, that it has to be filed, and it hadn't been filed.

Q What did you observe in the file about the question on liability?

MR. BURNS: I object to that unless there is some basis for this.

THE COURT: I think first, of course,

D. Denny, for Deft., Direct.

we should know the time when this witness performed these functions and when.

Q Could you give us the time as to when you examined the file first and any subsequent examinations of the file?

A I examined the file on two occasions.

Q Tell us about them.

A The first occasion, the one I am talking about, the best I could locate at that time would be January of 1976 or in late December --

THE COURT: I will sustain the objection to anything he did after the date of May 20th, 1975, as irrelevant. If you want to give me an offer of proof on the record, I will excuse the jury so you can do that.

Q Did you examine the file prior to May 20th, 1975?

A Yes.

THE COURT: On May 20, '75, did you ascertain that service had not been effected correctly?

A Excuse me, Your Honor. I don't know what that date means.

THE COURT: That date is what we are concerned with in this lawsuit, and that date, I believe, is more than three years after the accident. I think the accident was in January of '72.

D. Denny, for Deft., Direct.

MR. SARGENT: That's correct.

THE WITNESS: Sometime in late January, 1976, was the first time that this case was called to my attention.

THE COURT: I will sustain the objection.

Q So it wasn't until --

THE COURT: Wait a minute. I'm sustaining the objection. This witness has never heard about the lawsuit until January, 1976. If you want to make an offer of proof, I will excuse the jury and let you make it.

MR. SARGENT: I beg to differ with you. That is not what he testified.

THE COURT: That is what I understood Mr. Denny to say, that the first time Mr. Wright's claim against the operator of this Volkswagen came to his attention was January, 1976. Is that right, Mr. Denny?

Q Is that the first time the file came to your attention?

A That is within a month -- that is about the first time when it came to my attention.

THE COURT: December, '75, or January, '76 -- same ruling.

MR. SARGENT: I have no further

R. Goetz, for Deft., Direct.

questions.

MR. BURNS: I have no questions.

(Witness excused.)

R I C H A R D G O E T Z ,

called as a witness by the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Mr. Goetz, were you employed by Scott Investigation Services
 in January of 1972?

A Yes, I was.

Q In what capacity?

A I was an investigator.

Q Can you just explain, briefly, what that position entailed?

A It entailed investigating automobile accidents and also
 meeting clients and attorneys and obtaining a signed re-
 tainer agreement.

Q Would you just clarify that? You say that you would work
 for --

A At the time I was working basically for an attorney by
 the name of Kevin Brinkworth, and as part of that work,
 I was investigating automobile accidents, part of which
 included meeting with the attorney's client, obtaining
 the details of the accident, and then obtaining a signed
 retainer agreement.

R. Goetz, for Deft., Direct.

Q What was a signed retainer agreement? What would that be?

A Basically, it is a document, I guess you would call it, which states the date of the accident and the attorney's percentage of the accident settlement, and then the client would sign that.

Q And on behalf of the attorney, you could sign up the client, is that correct?

A Yes.

Q Through the retainer statement?

A Right.

Q Could you tell us if the United States Government Postal Inspector, an individual by the name of Cliff Harm, served you with the subpoena to testify for the Government in this case?

THE COURT: In this trial here?

MR. SARGENT: Yes.

THE WITNESS: Yes.

Q Do you recall the title on the subpoena?

THE COURT: In this case here? Is that what you are asking him about?

MR. SARGENT: Yes.

THE WITNESS: I don't specifically recall the title.

THE COURT: Do you have it with you?

A I don't have the one that was served by the Postal Inspector.

R. Goetz, for Deft., Direct.

Mr. Sargent subpoenaed me, and I have that with me.

THE COURT: You mean you had two subpoenas, one from the defendant and one from the Government in this case?

A The Government served me to appear on Friday, and then the Government decided not to use me on Friday.

Q Pursuant to the subpoena, you appeared in Mr. Burns' office this past Friday, October 22nd, is that correct?

A That's correct.

Q Am I correct that both Mr. Burns and the Government Agent Harm asked you a series of questions relative to this case?

A That's correct.

Q And do you recall what information you gave to Mr. Burns and Agent Harm?

A Basically, I told them that I had no specific recollection with respect to the matter that is being heard here.

Q And did you tell them that, in fact, in January, 1972, you requested the two police officers to sign a retainer statement?

A Well, they provided me with a copy of a handwritten letter, which was in my handwriting, would appear to be in my handwriting, along with a typewritten letter which was a copy of the Scott Investigation Service to the attorney, Kevin Brinkworth's, office and that had the police officer's name, Mr. Wright, on it, and they asked me then if I had

R. Goetz, for Deft., Direct.

specific recollection with respect to the investigation that I did.

Q How did you respond?

A I told him that I didn't have any specific recollection at all, that I wouldn't even know the officer involved if I passed him on the street. You know, it happened five years ago, and I just don't have any recollection at all after five years.

Q So you told him you couldn't remember Officer Wright or Officer Marvin?

A That's right.

Q And you told him you couldn't remember the details of the accident, is that correct?

A That's correct.

Q After you informed Mr. Burns and Agent Harm that you couldn't recall any of these facts, what did they tell you?

A Something to the effect, "You made an easy twenty bucks. We are not going to use you," or they said, "We can't use you."

THE COURT: You received a witness fee of twenty dollars, is that what you are talking about?

A No. I hadn't received it, but on previous testimony before the Grand Jury, I was paid twenty dollars as a result of the subpoena, and I believe that is what he was referring

Conference in Robing Room.

to, that I made an easy twenty dollars that day and didn't have to appear.

Q The Government excused you as a witness, is that correct?

A That's correct.

MR. SARCENT: I have no further questions.

MR. BURNS: I am totally mystified as to the relevance --

THE COURT: No speeches in front of the jury, Mr. Burns. If you want to cross-examine, you may do so.

MR. BURNS: I move to strike the entire testimony as totally irrelevant to the case.

THE COURT: It is not totally irrelevant. The man said he was going around getting retainers for Brinkworth. I think that is relevant. I will let it stand.

MR. BURNS: I didn't expect this witness. I have some records downstairs that I want to cross-examine him on.

THE COURT: Members of the jury, don't discuss the case in the jury room.

(The jury left the courtroom.)

(In the robing room; counsel present.)

THE COURT: Go ahead, Mr. Burns.

R. Goetz, for Deft., Cross.

MR. BURNS: Your Honor, I requested this meeting before Mr. Goetz returns just to state for the record that Mr. Goetz was a witness before the Grand Jury that returned the Indictment against Mr. Wright and was granted immunity under Section 6002 and 6003 of Title 18. I wasn't sure if this fact had been made known to the defendant. Quite frankly, I don't know at this point how it affects anyone's rights, but I want to obviate any problem post-trial with the defendant claiming not to have known that he had immunity for whatever effect it may have on the lawsuit.

THE COURT: It is proper to be disclosed. I think that Mr. Sargent already knows about it, but you did right to put it on the record, and the record will so indicate.

MR. BURNS: Thank you, Your Honor.

(Jury present.)

R I C H A R D G O E T Z,

called as a witness by the Defendant, being previously duly sworn, testified further as follows:

CROSS EXAMINATION

BY MR. BURNS:

Q Mr. Goetz, how long have you worked for Mr. Brinkworth?

A Since about 1970 or '71 or so.

R. Goetz, for Deft., Cross.

Q Do you still work for him?

A Yes, sir.

Q Approximately how many clients would you say you have signed up for him by taking the retainer statements from them?

MR. SARGENT: I object to the relevancy.

THE COURT: Overruled.

A I would say in excess of two hundred, three -- maybe more.

Q Does this cover the entire period 1970 through the present?

A Well, presently, there is not much in the way of signing up his clients. That, basically, ended about the beginning of "no-fault insurance," probably 1974, between 1971 and 1974.

Q Do you have a specific recollection of signing up any of these individual clients?

MR. SARGENT: I object to the question.

THE COURT: I will overrule the objection. I will take it as to the witness' credibility.

A Very few of them unless there was something peculiar about the case, and very few of them do I have specific recollection.

Q Was this a very routine act, signing up a client for Mr. Brinkworth?

A Yes, it was.

R. Goetz, for Deft., Cross.

Q Is that why you don't really recall any of those specifically?

A It is part of the reason.

Q Do you make any reports of any kind to Mr. Brinkworth after the clients have been signed up?

A After they have been signed up?

Q Yes.

A Initially, in the early part, I did the investigations, and there was not a great volume of them. A letter would be sent regarding the signing up and so forth.

Q Does the letter go to Mr. Brinkworth?

A Basically, what I would do is I would hand-write a letter that would then be typed by Scott Investigation and sent to Mr. Brinkworth, that's correct.

Q And did you sent anything to Mr. Brinkworth besides the letter?

A A bill would go with it, and if I had not previously hand-delivered the document, they would be sent with it also.

(Government's Exhibit 19 marked for identification.)

Q Mr. Goetz, would you look at what has been marked as Government's Exhibit 19 for identification, please?

A (Witness complies.)

Q What is that Exhibit?

A Well, the first page of it is a bill dated February 17, 1972, addressed to Kevin Brinkworth.

R. Goetz, for Deft., Cross.

Q You don't have to give all the specifics at this moment, but is this the bill that you would prepare after you signed up one of Mr. Brinkworth's clients?

A This is the bill that would be prepared by Scott Investigation.

Q And you were an employee of Scott Investigation?

A Yes.

Q Attached to this bill there is a typewritten letter, is there not?

A That's correct.

Q Would you state what this letter is?

A Basically, it is the cover letter that was used -- do you want me to read the letter?

Q Just what is in the letter?

THE COURT: These papers apply to Mr. Wright?

A Yes. It says, "Regarding Richard Marvin and William Wright."

Q And this is a letter that you wrote to Mr. Brinkworth about signing up Mr. Marvin and Mr. Wright, is that correct?

A That's correct.

Q Attached to that there is a third piece of paper, is there not?

A Yes.

Q And that is in your own handwriting?

R. Goetz, for Deft., Cross.

A That's correct.

Q And is this the handwritten basis for the typed letter, which appears before it?

A Yes.

Q Also regarding Mr. Wright and Mr. Marvin?

A Right.

Q Did you review these documents in my office last Friday?

A That's correct.

Q On the basis of reviewing these documents, did it refresh your recollection as to the events referred to in the letter?

A It refreshed my recollection only as to what was contained in the letter, but I still do not recall the actual physically going out and signing up, or typing the information --

Q Is your memory at this point, at this stage, exhausted?

A Yes, it is.

Q When did you write that letter, which is the second page of the Exhibit?

A The second page of the Exhibit?

Q Yes.

A The typewritten page?

Q Yes.

A That is dated February 17th, 1972.

Q Did you actually write that on February 17th, 1972?

R. Goetz, for Deft., Cross.

A No. This was typed by William Pieznowski, and I would guess it was either typed by himself or by his wife.

Q Can you tell us when the handwritten letter was prepared that you say is in your own handwriting?

A I wouldn't be able to tell you that. There is no date on it.

Q Was it prepared close in time to the events referred to in the letter?

A Well, it would have been written sometime after January 31st, 1972, and between January 31st and February 17th.

Q Was it written at a time when the events were fresh in your mind?

A Yes.

Q Were the details that you described in that letter, were they true at the time you wrote them?

A I'm sure they were, yes.

MR. BURNS: Your Honor, at this time I offer in evidence Government's Exhibit 19 for identification.

MR. SARGENT: I have no objection, Your Honor.

THE COURT: If there is no objection, it will be received in evidence.

(Government's Exhibit 19 marked in evidence.)

Conference at Side Bar.

CROSS EXAMINATION CONTINUED

BY MR. BURNS:

Q Mr. Goetz, have you ever testified in any other proceedings in this building regarding Kevin Brinkworth?

MR. SARGENT: I object to the question.

THE COURT: Sustained. If there is a purpose for the inquiry, I will hear you at the side bar.

(At the side bar.)

THE COURT: If there is particular testimony that he gave in any other proceeding, he may be confronted with it.

MR. BURNS: No, that is not the purpose. On his direct testimony the witness mentioned that I said, or what Mr. Harm said, that he made an easy twenty bucks. I want the record to reflect the witness' understanding at the time he was here last Friday was simply as a witness subpoenaed to testify in a criminal proceeding in a Federal Court. He was entitled and had, in fact, received twenty dollars.

THE COURT: I think he told us that because I asked him, because it wasn't clear to me. I think that is clear already.

MR. BURNS: All right. Could I ask

R. Goetz, for Deft., Re-direct.

the Court to explain at this point or maybe at some other point that a witness who is subpoenaed to testify and comes to testify in a criminal proceeding is entitled to a witness fee. Nobody is paying for any testimony.

THE COURT: I think that is clear already.

(In open court.)

MR. BURNS: I have no further questions.

MR. SARGENT: I have some redirect,

Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. SARGENT:

Q Mr. Goetz, I will just ask you to read the contents of the letter that Mr. Pleznowski had typed from your notes.

A The letter is dated February 17, 1972 --

THE COURT: The record may show that Government's Exhibit 19 is being read to the jury.

(Mr. Goetz read to the jury from Government's Exhibit 19 in evidence.)

Q What reference is being made to the defendant? Who are you referring to as the defendant?

A The defendant is not listed on here.

K. S. Curry, for Deft., Direct.

THE COURT: You mean the operator of
the other car, don't you?

A Right, the operator --

Q The letter refers to the "defendant." Who does the word
"defendant" mean?

A The defendant is the operator of the other car whose name
does not appear on this.

Q So liability is with the operator of the other car, is that
right?

A Yes.

MR. SARGENT: I have no further ques-
tions.

(Witness excused.)

KENNETH S. CURRY,

called as a witness by the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Father Curry, will you tell us what your vocation is?

A I am a priest in the Episcopal Church since 1952.

Q What is your present occupation?

A At present I am director of the Division for Human Rela-
tions within the Department of Human Resources for the
City of Buffalo.

THE COURT: Is that in addition to

* * *

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If Mr. Sargent really doesn't want me to send for him, I certainly won't do it. But I must say I take a dim view of an attorney who isn't here to give evidence and thinks some City function is more important.

You are resting, then?

MR. SARGENT: That's correct.

THE COURT: Do you have any rebuttal?

MR. BURNS: No, Your Honor.

THE COURT: You may make your motions in chambers, and I will have my charge conference at this time.

(Recess.)

(In the robing room.)

THE COURT: To begin with, did any of you give me any written requests to charge?

MR. BURNS: I have a request here that I would like to hand to the Court.

THE COURT: Do you have any?

MR. SARGENT: No, we don't, Your Honor.

THE COURT: Have you seen Mr. Burns' requests?

MR. SARGENT: No, I'm just getting it now.

MR. BURNS: There are several requests in here that were based upon the premise that Count 2 would

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be in. Obviously, it is not in the case anymore, and the last few could be ignored by the Court.

THE COURT: I think perhaps I would save time if I would just go through with you in outline form what I had planned to charge. Then if you have any questions about it or anything that you want to take exception to now, you may do so. Exceptions taken now will not have to be repeated later.

I will begin by explaining to them the importance of their function -- that the parties are equal -- that they decide the questions of fact, and they have to follow the Court's instructions as to the law; that the instructions have to be taken as a whole; that their recollection governs over anything that the attorneys or I might say.

I will impress upon them the neutrality of the Court in the matter. I will tell them that the Indictment is no evidence of the crime charged.

Then I will explain to them in the traditional terms the presumption of innocence and the burden of proof beyond a reasonable doubt -- not beyond all possible doubt.

I would explain to them the difference between direct and circumstantial evidence in the traditional form. I will discuss with them how to determine

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credibility, and that they use their common sense and consider possible interest or lack of interest, whether it is borne out of the testimony of others or by documents or exhibits, and the demeanor, the opportunity the witness had, the probability or improbability. I will tell them if a witness has shown to have knowingly testified falsely concerning any material matter in the trial that they have a right to distrust such witness' testimony in other things and may reject all the testimony or consider such parts as you deem worthy of belief.

I will point out to them that the defendant has an interest in the outcome of the case, and that should be determined; however, it is a matter entirely for them to decide.

I will tell them that evidence of reputation for good character by itself may raise a reasonable doubt, but like all fact matters of the case, it is a matter for their own determination. And I will caution them that the character witnesses are not to be considered as expressing any opinion as to guilt or innocence of the defendant of this particular charge, and that is for them to determine.

Then I will read Count 1 of the Indictment and point out to them that the only parts that the Govern-

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ment contends and the Defendant denies are knowingly making a false declaration. It is not contended that all the answers are false. Some testimony was included only to give some indication as to the context of the answers claimed to be false.

Then I will read the Statute, 1623, and I will explain to them what a Grand Jury is and that its functions include investigating situations to see if there has been criminal misconduct and determining such matters as whether probable cause exists to believe that a crime has been committed or not, and if so, whether any particular person should be charged or accused, and if so, of what crimes, to answer to a trial jury such as themselves.

And then I will point out to them that the Grand Jury has to take testimony to do this and that the administration of justice depends upon respect for the sanctity of the oath; that when one is charged with the crime of giving false testimony, he is charged with violation of a law which is at the heart of our administration of justice.

I will then give them the three elements of the crime. The first element, that on or about May 20, 1975, in the Western District of New York, the defendant, William G. Wright, took an oath to

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testify truthfully before a Grand Jury in this District, a body authorized by law to administer an oath.

Second, that the matters about which it is charged he testified falsely were material to the issues under inquiry by the Grand Jury.

Third, that the defendant then willfully made at least one false statement under oath among those set forth in the Indictment, knowing that statement to be false.

As to the first element, no explanation is required. You have the stipulation and the testimony of the Court Reporter that he took the oath, and a copy of the Court Order of Chief Judge Curtin of this District convening the Grand Jury is in evidence before you. You also have Exhibit 4, the transcript. The first element requires no further explanation on my part.

Now as to whether the testimony claimed to be false was material, you have heard testimony that the Grand Jury was investigating the settlement of claims for damages for injuries to persons represented by attorney Kevin J. Brinkworth, and possible conspiracy or mail fraud in connection with those activities. It is the duty of the Grand Jury to investigate such matters which might constitute violation of the Federal

laws, and any testimony which might give the Grand Jury a lead in digging out such Federal crimes is material testimony. If you believe the testimony in this case as to what matters the Grand Jury was investigating, beyond a reasonable doubt, then I instruct you as a matter of law, that the testimony of the defendant as set forth in the Indictment here, before the Grand Jury, was material to the issues under inquiry by the Grand Jury and that the Grand Jury by asking those questions, directly by individual jurors, or through the United States Attorney, was acting within its rights and powers.

The fact that the Grand Jurors may already have been in possession of accident reports or records of the insurance adjuster or testimony of others does not affect materiality and does not inhibit or prevent the Grand Jury from asking the same question of another witness, in this case the defendant. The Grand Jury can take as much material testimony as it wants and from as many witnesses as it wants. They also may ask repetitious questions of the same witness, and often do so.

Now the third element raises two issues: Was any answer given as testimony by the defendant as listed in the Indictment false? Did he give any part

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of that testimony knowing at the time that it was false?

It is not necessary that the Government prove that every listed answer is false. It is sufficient if you find that any single listed underlined answer contained in the Indictment is false.

Here it is charged that when the witness testified to a number of questions, in effect, that he could not remember, that in so testifying, he was testifying falsely. The state of a man's recollection of a fact, that is, the state of his memory, is a fact which the jury can decide, just the same as it can decide the state of his digestion, or whether he suffered pain at any given time or not, or what his intentions were at any given time when he acted. You can resolve the issue upon all the evidence in the case, including circumstantial evidence, using your own common sense. Your common sense will tell you that it is readily possible for a witness to lie, to testify falsely as to a material matter by saying, "I don't remember." However, it is not enough to suspect falsity of such an answer. Before there may be a conviction, the jurors must be satisfied as to falsity beyond a reasonable doubt.

And then I will tell them they have to review

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it in context, and they are to consider all the evidence as read to them by the Grand Jury Court Reporter and received in evidence as Exhibit 4.

Then I will define "knowingly," and I will tell them a specific criminal intent must be proved beyond a reasonable doubt, but it is not necessary they show that he knew he was breaking a particular law and that it has nothing to do with his private reasons.

And I will define "knowingly and willfully" in the traditional terms which I'm sure you are both well familiar.

I will tell them that they have to select a foreman and that the foreman has no greater vote, and to discuss with each other, and that the verdict must be unanimous, and that they should hold their conscientious view if they don't agree with others.

They are not to be affected by sympathy or possible sentence. Their duty is to decide it on the facts.

And that is about it. Now is there anything else, or additional, or further?

(No response.)

THE COURT: I had put in the word "willfully" which is not in the Government requests, because I have traditionally so charged in 6323 prosecutions of

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which I have had quite a few.

I will not charge Request No. 8 of the Government, about admission by the defendant. I don't know if you have any admissions or not in this record.

Is there anything additional or further? Do any of you have any problems?

MR. SARGENT: Just for the record, we would like to make a motion for a verdict of acquittal at this time.

THE COURT: Yes. I will deny the motion as to Count 1.

You will have a redacted Indictment for me by the morning?

MR. BURNS: I have it now. Perhaps it would be a good idea for all of us to review it so there is no question at the time it goes to the jury.

THE COURT: That is fine.

Let's go off the record.

(Discussion off the record.)

THE COURT: Going back on the record, I think we could agree that this proposed redacted Indictment is not satisfactory, but you will give us a proper one in the morning, won't you, Mr. Burns?

MR. BURNS: Yes.

THE COURT: And make sure that Mr. Sargent has a

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chance to see it and that it is given to me before we start court. I want to be informed at that time that he does or does not agree that it is all right.

MR. BURNS: All right. I apologize for the error. It is based entirely upon my misunderstanding.

THE COURT: Those things happen.

How long will you want for your summation?

MR. BURNS: I think approximately forty-five minutes.

THE COURT: And you, sir?

MR. SARGENT: I would probably suggest fifteen minutes.

THE COURT: And any rebuttal is strictly to be limited to rebuttal under this new rule.

This can be off the record.

(Discussion off the record.)

THE COURT: Is there anything else, gentlemen? Can we commence the summations in about five minutes?

MR. BURNS: Yes, Your Honor.

THE COURT: Is there additional request that I haven't had?

MR. SARGENT: I have no other requests.

MR. BURNS: The jury is to be charged in the morning?

THE COURT: The first thing in the morning.

W. A. Price, for Deft., Direct.

We will resume in about five minutes.

(Recess.)

(Jury present.)

THE COURT: You may go forward, Mr.

Sargent.

MR. SARGENT: William Price is here
at this time, Your Honor.

THE COURT: You may proceed.

WILLIAM A. PRICE,

called as a witness by the Defendant, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SARGENT:

Q Mr. Price, what is your present occupation, please?

A I am the District Representative on Buffalo's Common
Council.

Q What is the approximate number of persons you represent,
sir?

A Approximately 27,000 registered voters and 70,000 resi-
dents of the area.

Q How long have you been a Council member in the City of
Buffalo?

A This is my second term. I'm going on three years.

Q And Councilman Price, are you also an attorney?

A Yes, I am.

* * *

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Charge of the Court.

So, ladies and gentlemen, in essence what I am asking you to do is simply judge this case by the evidence before you, read carefully the transcript of Mr. Wright's testimony, and pay particular attention to both the questions and answers asked of him, and I submit, as I did in my comments yesterday, that the evidence justly compels you to decide that a man such as Mr. Wright just could not possibly have forgotten whether he saw a doctor more than one hundred times as charged in the Indictment.

Thank you.

CHARGE OF THE COURT

THE COURT: Members of the jury, you are about to undertake your final function, and as I mentioned to you earlier, you are performing one of the most sacred obligations of citizenship. You are acting as ministers of justice.

You are to discharge this final duty in an attitude of complete impartiality, and as I said when you were first sworn, without bias or prejudice, for or against the Government or the defendant, as parties to this controversy.

Let me state that the fact that the Government is a party here entitles it to no greater considera-

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tion than that accorded to any other party in court. By the same token, it is entitled to no less consideration. All parties, individuals and Government alike, stand as equals before the bar of justice in this court.

Your final role here is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the fact. You determine the weight of the evidence. You appraise the credibility or truthfulness of the witnesses. And you draw the reasonable inferences or conclusions from the evidence, and you resolve such conflicts as there may be in the evidence.

My final function here is to instruct you as to the law, and it is your duty to accept my instructions as to the law and then apply them to the facts of the case as you find them to be.

Now, you are not to take any one instruction which I give you alone as stating the law, but you are to consider all my instructions, taken together as a whole.

With respect to any fact matter, it is your recollection and yours alone that controls. Anything that the lawyers, either for the Government or the defendant, may have said with respect to matters in evidence, whether during the trial, in a question, or

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in an argument or in summations, is not to be substituted for your own recollection of what the evidence is.

And anything that I might say during the trial, or anything I might refer to during the course of giving you these instructions as to any fact matter or any matter in evidence, is not to be taken in lieu of your own recollection.

Now the attorneys in the case not only have their right, but it is their duty to make objections, to argue vigorously and press whatever legal theories they may have. They are simply performing their duty. Any evidence or any argument as to which an objection was sustained by the Court, and anything ordered stricken out by the Court must be disregarded by you in its entirety.

Put out of your mind any exchanges which may have occurred during the trial between the lawyers or between any attorney and the Court. It is not a contest between the lawyers. It makes no difference how you feel about the lawyers or whether you like them or not, or whether the charges made by any lawyer about any other lawyer in the case are well-founded or not. The opinion of any lawyer as to guilt or innocence is of no consequence to you, nor are you to

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be concerned in any way as to how either one tried the case. They were here performing their duty, and you are to put all of those extraneous matters out of your mind.

Also, it is not my function to favor one side or the other or to criticize anybody in any way whatever, or to indicate to you, the jury, that I have in any way any opinion as to the truthfulness of any witnesses, or as to the guilt or innocence of the defendant. That is your function, and it is yours alone, and I leave it entirely to you. So please don't assume that I hold any opinion in these matters. And please don't reach any conclusion that I may have some attitude or that I may favor one side or the other in the case. I do not.

I told you earlier that the Indictment here itself is no evidence of the crime charged. Instead, an Indictment is merely the method or procedure under the law whereby persons accused of crimes by a Grand Jury are brought into court to have their case decided by a trial jury such as yourselves.

Therefore, the Indictment must be given no evidentiary value, but shall be treated by you only as an accusation. It is not evidence or proof of the defendant's guilt, and no weight or significance what-

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soever is to be given to the fact that an indictment has been returned against the defendant.

The defendant has pleaded not guilty, and, thus, the Government has the burden of proving the charge beyond a reasonable doubt.

46 The defendant does not have to prove his innocence or bring in any evidence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment. This presumption of innocence was in his favor at the start of the trial, and as I believe I told you when you were selected, it continued in his favor throughout the entire trial, and the presumption of innocence is in his favor now and remains in his favor during the course of your deliberations in the jury room. And the presumption of innocence is removed only if and when you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely

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and act upon it unhesitatingly in the more-important matters of your own affairs.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. And this burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would ever be convicted, because it is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible to mathematical certainty. It is sufficient in a criminal case if guilt is proved beyond a reasonable doubt; not beyond all possible doubt.

For your guidance in considering the evidence you have heard in the case, I must tell you there are two classes of evidence recognized and admitted in courts of justice upon either of which the jury may find an accused guilty of a crime. One is called direct evidence, and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue

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without any need for any other amplification, although, of course, there is also the question whether it's to be believed.

Circumstantial evidence tends to show facts from which the fact in issue may reasonably be inferred. It is evidence that tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the mind to infer or conclude that the facts sought to be established must be true.

There are a number of traditional examples of circumstantial evidence. When Robinson Crusoe found a footprint on the island in the sand, he knew there was another person on the island besides himself. Sometimes you might be in a room with windows in one of the higher floors of one of the buildings down the street here. It may be a cloudy day, and sometimes you look out the window and you can't tell whether it is raining or not, but you see people out in the street have their umbrellas up. And you will usually to the conclusion it must be raining. You have direct evidence, the evidence of your own senses. You can see the umbrellas, and that evidence constitutes circumstantial evidence from which you are entitled to draw the inference or reach the conclusion that it must be raining. In other words, circumstantial evidence con-

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sists of facts proved from which the jury may infer by a process of reasoning other facts which may be in dispute, and circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant before he may be convicted of any crime.

Now in determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth and the degree of weight to which you choose to give that testimony. The testimony of a witness may fail to conform to the facts as they occurred because the witness didn't actually see or hear what he testified about, or because he or she is intentionally telling a falsehood, or because his or her recollection of the events, or his or her memory is faulty, or because he or she hasn't expressed himself or herself clearly in giving testimony. Members of the jury, there is no magic formula by which you can evaluate the testimony. You bring to the courtroom all of the everyday experiences and background of your own lives. In your everyday affairs you determine for yourselves the reliability of statements made to you by other people and the same tests

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you use in your everyday dealings and everyday life are the tests that you will apply in your jury deliberations.

You may, of course, consider the interest or lack of interest of any witnesses in the outcome of this case. A witness who is interested in the outcome of the case is not necessarily unworthy of belief, but the interest of a witness is a factor or a possible motive which you may consider in determining the weight and credibility to be given to his or her testimony. And in doing this you may also consider whether the testimony of a witness is corroborated or borne out by the testimony of others, or by documentary evidence or exhibits.

You may consider the bias or prejudice of a witness, if there be any, and the manner in which the witness gives his or her testimony on the stand, the appearance and conduct of the witness, the opportunity the witness had to observe the facts that he or she has testified about and the probability or improbability of the testimony in the light of all the other events in the trial.

You can consider whether a witness had a motive to lie. These are all items to be taken into your consideration in determining the truthfulness and

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weight, if any, that you will assign to that witness' testimony. If those considerations make it seem that there is a discrepancy, you have to consider whether this can be reconciled by fitting the conflicting testimony together. And if that is not possible, you will have to determine which of the conflicting versions you will accept, if any.

Now, if a witness is shown to have knowingly testified falsely concerning any material matter in the trial, you have a right to distrust that witness' testimony in other things, and you may reject all of the testimony of such witness or you may give it or parts of it such credence as you think it deserves.

The law permits a defendant, upon his request, to testify in his own behalf. The testimony of the defendant is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest may create a motive for false testimony. The greater the interest, the stronger the motive, and, therefore, the interest of the defendant is a matter which may affect the weight which should be given to that

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testimony. However, that is a matter entirely for you to determine, using your own common sense and considering all the evidence in the case.

There has been evidence that the defendant, William Wright, enjoys a reputation for good character as to his honesty and truthfulness. Proof of good character, by itself, may raise a reasonable doubt. The force and effect of good character or reputation evidence is like all fact matters in the case, solely a matter for your own determination, and you and you alone will decide its effect on the case, using your own common sense and judgment.

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I caution you that the character witnesses are not to be considered as expressing any opinion as to the guilt or innocence of the defendant of this particular charge, and that is a matter for your decision and yours alone. If proof shows guilt beyond a reasonable doubt, you are not required to acquit a person simply because he enjoyed a previous good reputation for honesty and truthfulness.

Now in a moment I will read to you part of Count 1 of the Indictment. There is a copy which will be made available to you for your use in the jury room, which has underlined on it those answers which the Government contends and the defendant denies

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are knowingly false. It is not contended that all the answers are false -- some additional testimony has been included in the Indictment to give you some indication of the context of the answers claimed to be false. You have available to you all of the testimony given by Mr. Wright. And that also should be considered by you to determine the context of the answers claimed to be false. You are not to consider as false any material which is not underlined on a copy of the Indictment given to you. The charges here are limited to the underlined answers only, any one of which may constitute a false declaration which, if all the elements of the crime which I'm about to explain to you are satisfied, will be a basis for conviction.

I will now read the Indictment:

"The Grand Jury Charges:

"That on or about the 20th day of May, 1975, in the Western District of New York, the defendant, William G. Wright, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impaneled and sworn in the United States District Court for the Western District of New York, did unlawfully and knowingly make certain false material

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declarations as hereinafter described:

"1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into alleged violations of Sections 371 and 1341 of Title 18 of the United States Code, relating to the negotiation and settlement of automobile accident claims submitted to insurance companies by an attorney, Kevin J. Brinkworth, on behalf of his clients.

"2. It was material to the aforesaid investigation to ascertain the circumstances surrounding an automobile accident involving the defendant, William G. Wright, a client of attorney Kevin J. Brinkworth, which allegedly took place on January 24, 1972, including the manner in which the accident occurred, the injuries suffered by the defendant, William G. Wright, the medical treatment received by the defendant, William G. Wright, for said injuries, and the time lost from work by the defendant, William G. Wright, on account of said injuries.

"3. At the time and place aforesaid, the defendant, William G. Wright, appeared as a witness before the aforesaid Grand Jury, and then and there being under oath, testified falsely before said Grand Jury with respect to said material matters as follows:"

And there are listed thereafter the questions

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and answers, and some of the answers have been underlined, and it is contended in this trial and disputed that those answers were false. I would ordinarily read that to you, members of the jury, but it has been read substantially verbatim in summation by both attorneys. And you will have a copy of it available to you in the jury room so that you can look at it at your leisure, one at a time, and I think it would be unnecessary at this time for me to read again all of those questions and answers.

Now the Indictment charges the defendant, Mr. Wright, with knowingly making a false declaration before a Federal Grand Jury while under oath. He is charged with violation of Section 1623 of Title 18, United States Code. The pertinent provisions of this statute reads as follows: "Whoever under oath in any proceeding before any Grand Jury of the United States knowingly makes any false material declaration is guilty of a crime."

Simply stated, what the defendant is charged with here is the willful giving of false testimony, knowing it to be false, as to a material matter, before a Federal Grand Jury while under oath.

For the benefit of any of you who may not know what a Grand Jury is, I will tell you that a Grand

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Jury consists of not more than twenty-three and not less than sixteen persons, selected from the local area just as you, yourselves, were selected, to perform several historic and important functions.

Principally, the functions of the Grand Jury, and it has other functions, but principally, its functions include investigating situations to see if there has been criminal misconduct, and determining such matters as whether probable cause exists to believe that a crime has been committed or not, and if so, whether any particular person should be charged or accused, and if so, of what crimes, to come into court and answer to a trial jury such as yourselves. The Grand Jury is the only process by which persons can be charged with crime in a Federal Court, other than a certain misdemeanor as to which it is not required to go to the Grand Jury. The Grand Jury is determining whether someone should be brought to trial. They are not determining guilt or innocence. That is a question for the trial jury.

Now the matters which are before the Grand Jury for its consideration cannot be resolved unless the Grand Jury first takes testimony. Such testimony is taken under oath. Just as this court and jury functions by taking sworn testimony, the Grand Jury

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proceeds by placing people under oath and asking them questions and recording their answers. And after they have completed the investigation, they put the various testimony of the various witnesses together and vote as to whether anybody should be indicted or not for any particular violations.

The administration of justice depends upon respect for the sanctity of the oath. When one is charged with the crime of giving false testimony, he is charged with violation of a law which is at the heart of our administration of justice.

Now in order to sustain its burden in this case, the Government must prove to your satisfaction, beyond a reasonable doubt, each of these three essential elements. I'm about to state the elements, and this is particularly important:

First, that on or about May 20, 1975, in the Western District of New York -- and, of course, you all know that Buffalo is in the Western District of New York -- the defendant, William G. Wright, took an oath to testify truthfully before a Grand Jury in this District, a body authorized by law to administer an oath.

Second, that the matters about which it is charged he testified falsely were material to the

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issues under inquiry by the Grand Jury.

Third, that the defendant then willfully made at least one false statement under oath among those as set forth in the Indictment, and underlined as being false, knowing that statement to be false.

Now a few words as to each of these elements.

As to the first element, you have the stipulated testimony of the Grand Jury Foreman, Mr. Chapman, and the testimony of the Court Reporter, that he took the oath, and a copy of the Court Order of Chief Judge Curtin of this District convening the Grand Jury is in evidence before you. You also have Exhibit 4, the transcript of the testimony given by Mr. Wright before the Grand Jury, so that the first element requires, I think, no further explanation on my part.

Now with respect to the second element as to whether the testimony claimed to be false was material, you have heard testimony that the Grand Jury was investigating the settlement of claims for damages for injuries by persons represented by attorney Kevin J. Brinkworth, and possible conspiracy or mail fraud in connection with those activities. It is the duty of the Grand Jury to investigate such matters which might constitute violation of the Federal laws, and any testimony which might give the Grand Jury a lead

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in digging out such Federal crimes is material testimony.

C48 If you believe the testimony in this case as to what matters the Grand Jury was investigating, beyond a reasonable doubt, then I instruct you as a matter of law, that the testimony of the defendant as set forth in the Indictment here, before the Grand Jury, was material to the issues under inquiry by the Grand Jury, and that the Grand Jury, in asking those questions, directly by individual Grand Jurors, or through the United States Attorney, acting for the Grand Jury, was acting within its rights and powers.

The fact that the Grand Jurors may have already been in possession of accident reports or records of the insurance adjuster or testimony of other persons does not affect materiality and does not inhibit or prevent the Grand Jury from asking the same question of another witness, in this case, the defendant. The Grand Jury can take as much material testimony as it wants and from as many witnesses as it wants. And even if it already knows the answers from others, so it can ask the questions again of others. They also may ask repetitious questions of the same witness, and often do so.

In so doing, you are to consider that the Grand

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Jury was acting properly and within its rights.

Now about the third element. The third element raises two issues for you to decide. First, was any answer given as testimony by the defendant as listed in the Indictment false?

And second, did he give any part of that testimony knowing at the time that it was false?

It is not necessary that the Government prove that every listed answer is false. It is sufficient if you find that any single listed underlined answer contained in the Indictment is false.

Here, it is charged that when the witness testified to a number of questions, in effect, that he could not remember, that in so testifying, he was testifying falsely. The state of a man's recollection of a fact, that is, the state of his memory, is in itself a fact which the jury can decide, just the same as it can decide the state of his digestion, or whether he suffered pain at any given time or not, or what his intentions were at any given time when he acted. You can resolve that issue upon the totality of all the evidence in the case, including circumstantial evidence, using your own common sense. Your common sense will tell you that it is readily possible for a witness to lie, to testify falsely, as to a

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material matter by saying, "I don't remember."

However, it is not enough to suspect falsity of such an answer. Before there may be a conviction, the jurors must be satisfied as to falsity beyond a reasonable doubt.

As I mentioned before, where there are several specifications of falsity in a single-Count Indictment, proof of any one of the specifications is sufficient to support a verdict of guilty.

I also instruct you that the allegedly false statements must be viewed in context to get the meaning of the testimony as a whole, and to assist you in considering the intent of the defendant at the time he was giving the testimony. It would not be proper to take any single question and answer out of context in reaching a conclusion. You are entitled to consider all the Grand Jury testimony as read to you by Mrs. Kluczynski, who was here on the stand, the Grand Jury Court Reporter, and as received in evidence as Government's Exhibit 4.

Now as to the third element: An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or some innocent reason. Specific criminal intent must be proved beyond a reasonable doubt as to the defendant before

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he can be convicted. This doesn't mean that the Government must show that the defendant knew he was breaking a particular law before he can be convicted of a crime, nor does it mean that the Government has to show the defendant intended to profit at the expense of any other person, nor does it have anything to do with his personal or private reasons for violating a statute. If, after considering all the evidence in accordance with my instructions, you come to the conclusion that the defendant violated the statute, then in that event, his personal or private reasons for doing so are of no consequence so far as his guilt is concerned.

I instruct you that these words "knowingly and willfully" mean deliberately, intentionally. You must be satisfied beyond a reasonable doubt that he acted with knowledge, consciously and in the free exercise of his will.

An act is done voluntarily and purposely and done not because of mistake, accident, negligence or other innocent reason. And a voluntary and purposeful act can be regarded as being done knowingly.

Knowledge and intent exists in the mind. It is not possible to look into a man's mind to see what went on there and to see what his intentions were on

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May 20, 1975. And the only way you have for arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown in the evidence, including the Exhibits, and to determine from such facts and circumstances whether the requisite knowledge and intent were present at the time in question or not.

Also I instruct you there is no need to prove motive, which is not to be confused by you with intent. The Government has the right to attempt to prove motive, but if he acted intentionally, he may be convicted without regard to what his motive was or whether he had any motive.

Nor is it necessary for the Government to call witnesses which the jury regards as cumulative, or to call witnesses equally available. And as I pointed out earlier to you, a defendant is not required to call any witnesses or bring in any proof at all.

Now, members of the jury, put out of your mind, please, all matters which have nothing to do with the case before you. Specifically, Mr. Brinkworth and Dr. Mernan are to be presumed innocent of any wrongdoing by you, and whatever they may have done has nothing to do with the case here before you or with

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Mr. Wright. You are not concerned with whether the defendant or the prosecutor, or either of them were arrogant in the Grand Jury Room. And it makes no difference whether the Grand Jurors or some of them showed anger against Mr. Wright, and whether if they did, it was justified or not, or whether he was rude to the Grand Jurors or not. All those matters, members of the jury, have nothing to do with this case at all. Grand Jury proceedings are an inquisition into facts and evidence, and not a social tea party. The only issue to be decided by you is that what I have explained to you previously and instructed you about in some detail, and you are to put any question of arrogance or harassment by repeating the question or anything else not relating to the charge here out of your mind absolutely in reaching your decision.

Now a word about your deliberations. Your first step is to select and agree upon a person to act as a foreman or forelady of the jury. The opinion of your spokesman, however, is no more important or significant than that of any other juror. All jurors are equal in the deliberations of the jury. And each of you is entitled to his or her own opinion. Each should, however, exchange views with the other jurors

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and discuss the case. That is the purpose of deliberations, to consider the evidence, to listen to the arguments of the fellow jurors, and to present individual views, and to consult with one another politely and reasonably, and to reach a fair verdict based solely and wholly on the evidence, if you can do so without violence to your individual judgment.

But each of you has to decide the case for himself or herself after this discussion. And you should not hesitate to change your opinion which after discussion convinces you is wrong. However, if after careful listening to the discussions with the other jurors and weighing all the evidence, any of you entertain a conscientious view that differs from the others, you don't give up your judgment simply because you are outnumbered or outweighed.

In order to reach a verdict the jury must be unanimous.

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Now under your oath as jurors, you cannot allow any consideration of the possible sentence, or punishment, which may be inflicted upon the defendant if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evi-

dence in the case and determine whether or not the defendant was proved guilty beyond a reasonable doubt and to do so solely upon the basis of the evidence and the law.

You are to decide the case upon the evidence and the evidence alone and not by any assumption, or conjecture, or sympathy, or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of not guilty, but on the other hand, if you should find that the law has been violated as charged, you shouldn't hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity.

Now I'm sending in the Exhibits to your jury room, and in just a few minutes after you commence your deliberations I will have available for you a marked copy of the Indictment. I remind you again the Indictment is merely a charge or an accusation. It has no status as evidence.

In the course of your deliberations if you find you are uncertain as to anything that I have set forth

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in my instructions, you can send out a note asking whatever you may desire. It is possible to read back testimony of any witness, but before that is done, I ask you to discuss it fully and see if you can get your total recollection from all the jurors, and that may make it unnecessary to read back anything. And if you do ask for anything to be read, please be specific about what you want.

In sending out any notes, do not state how the vote of the jury may then be divided. It is not a proper matter for me to be informed about.

Mr. Radek, it turns out that we don't need you, because the rest of our jurors have stayed with us throughout the trial. At this time you will be excused with the thanks of the Court. I instruct you, please do not discuss this case with anyone. Don't speak to the lawyers or anybody until after this jury has finished its work in the case, because to do so would be improper. I am unable to tell you what date to come back, but you will get notification. You may now withdraw from the courtroom.

(Alternate juror excused.)

(One Marshal was duly sworn.)

THE COURT: Members of the jury, I would like you to sit here just a minute or two more while I

Conference in Robing Room.

Speak with the attorneys in the next room to see if there is something else that they would like me to say to you in my instructions. And I ask you not to discuss the case while you are seated here until I find out whether I have anything additional to say to you, so please remain where you are in the custody of the Marshal. I will join you very promptly.

(In the robing room.)

THE COURT: Mr. Burns, do you have any additional requests or exceptions?

MR. BURNS: I do have one, Your Honor. I recall during the course of the trial we discussed Mr. Brinkworth and Dr. Mernan insofar as their availability or unavailability goes. I believe you said you would give an instruction on that. We have asked for such an instruction in Request No. 15, which I think equally states the law in the Circuit on this question.

THE COURT: Request No. 15, you say?

MR. BURNS: Yes, Your Honor.

THE COURT: I decline to give that instruction at this time for the reason that notwithstanding the lengthy and free-swinging summation of the defense in this case, no attempt was made to lay at the door of the prosecutor any responsibility for the failure to call Brinkworth or Mernan. I can only assume Mr.

Conference in Robing Room.

Sargent intentionally left it out or kept it out of his summation in order to avoid just such an instruction. At our charge conference, there was no explicit discussion as to that point, although I went over my charge with you in some detail. So in view of the fact that it was not laid at the door of the Government that they failed to call Brinkworth or Mernan at the trial, I think it is unnecessary and improper to give that instruction at this time, or even had it been asked earlier, as long as he stayed away from it, there is no need to go into it. So I decline to instruct on that.

Is there anything else?

MR. BURNS: No other exceptions.

THE COURT: Do you have any?

MR. SARGENT: Yes. I have just that one request on Section 1503 --

THE COURT: I think we all agreed on that.

MR. BURNS: Yes.

MR. SARGENT: It is not on the record, but I think we agreed on it, yes.

THE COURT: That will be taken care of. And I explained to them there will be a little delay because I don't know how long it would take.

MR. SARGENT: That's right.

Conference in Robing Room.

MR. BURNS: I think that is corrected now.

THE COURT: So the record may be clear, Mr. Sargent had pointed out quite correctly to the Court that the redacted form of the Indictment had not been equally redacted because there remained on the face of it a reference to Section 1503 of Title 18, and I understood all of us agreed that that should be remedied, and it now has been, is that true?

MR. SARGENT: I don't know.

MR. BURNS: I think it is remedied. I think my secretary is outside the door with the corrected copies.

THE COURT: Before it goes in, it has to be marked as a Court Exhibit, and it ought to be shown to Mr. Sargent so that he can state on the record that it is now in satisfactory form.

MR. BURNS: Also, Your Honor, since the actual words themselves are so important to this case, I have had twelve copies made, and I request that twelve copies be permitted to go to the trial jury. I think it would be easier.

THE COURT: That may be in everybody's interest. How do you feel about it, Mr. Sargent?

MR. SARGENT: I agree with that.

THE COURT: All right. Twelve copies may be

Jury Deliberations.

given. Thank you very much. I know you have both had an arduous trial.

MR. SARGENT: Thank you, Judge.

MR. BURNS: Thank you, Judge.

(In open court.)

THE COURT: Members of the jury, I have nothing additional to say to you except that I do hope that you will not discuss the case in the restaurant when you go to lunch and that you will conduct your deliberations only when all of the jurors can be present and participating equally. Now the Clerk will hand copies of the Indictment and the Exhibits to you.

Can you give them to the jury now?

MR. BURNS: I have the Exhibits. Unfortunately, the Indictment is not prepared yet. We are doing it.

THE COURT: We will send you the Indictment in a few moment, but you may withdraw from the courtroom now with the other Exhibits and commence your deliberations.

(At 10:40 a.m., the jury retired to deliberate upon a verdict.)

(At 12:40 p.m., in open court; jury present.)

THE COURT: Members of the jury, I have your note which I received at 12:27 p.m., and the note

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reads: "Request three things that the jury has to know before bringing forth a verdict."

I assume by your inquiry that you are seeking the three essential elements of the crime charged here, each of which must be proved beyond a reasonable doubt, and I will now tell you what those three elements are:

First, that on or about May 20, 1975, in the Western District of New York, the defendant, William G. Wright, took an oath to testify truthfully before a Grand Jury in this District, a body authorized by law to administer an oath.

The second element, that the matters about which it is charged he testified falsely were material to the issues under inquiry by the Grand Jury.

Third, that the defendant then willfully made at least one false statement under oath among those as set forth in the Indictment and underlined, knowing that statement to be false.

Now I did define in some detail and explained each of those three elements. If you have any difficulty or misunderstanding or are not clear in any way about my definition of any particular element, I would be entirely willing to repeat for you after lunch or whenever you want my discussion of each of

Conference in Robing Room.

the three elements; however, your note only asked for three, and I have just listed three for you, so I trust I have answered your inquiry. But if the answer is not of sufficient breadth, please come back with another note.

You may now withdraw from the courtroom. Please don't discuss the case in the restaurant.

Marshal, are you going to lunch now?

THE MARSHAL: Yes, Judge.

(At 12:45 p.m., the jury was escorted to lunch, after which they returned to the jury room and continued their deliberations.)

MR. SARGENT: May we have a discussion with you in chambers, Your Honor?

THE COURT: Yes.

(Off the record conference in the robing room.)

(At 2:30 p.m., in the robing room, counsel present.)

THE COURT: Gentlemen, at 2:11 p.m. I received a note from the jury with the following inquiry: "Is withholding information the same as making false material declarations?"

If counsel wishes to be heard as to how the inquiry of the note should be answered before I

Conference in Robing Room.

attempt to answer it, I will be willing to hear either or both of you.

MR. SARGENT: Naturally, we would submit that it is not, for the reason that withholding information, it seems to me, one could not know whether it was done with the third element necessary in this charge, and that being that it is done with a knowing and willful intent. I believe that in answering the question, in any event, the answer should incorporate that third element that is needed to find a guilty verdict.

THE COURT: What do you say, Mr. Burns?

MR. BURNS: Your Honor, I would say that withholding information may constitute the equivalent of false material declarations if the defendant -- pursuant to your earlier instructions -- that in withholding the information the defendant acted knowingly, that he had information, that he realized the questions called for, and yet he knowingly failed to answer the questions put to him truthfully.

THE COURT: Well, I suppose it is true to say that a witness is required to give responsive and complete answers. The witness is not required to volunteer information. The non-responsive answer, if true, would not be a false declaration. Once he answers, the answer has to be true, and if he says,

Conference in Robing Room.

"I don't remember" when, in fact, he did know, the information sought by the question that if all the elements are satisfied would be a violation of the statute.

MR. BURNS: I would agree, Your Honor, and with perhaps one addition, and that is to add the word "material" in there.

THE COURT: All right.

MR. BURNS: He can withhold information about his mother-in-law's name and not be guilty as to an offense.

THE COURT: Well, he didn't ask him his mother-in-law's name.

There is nothing here charged except "I don't remember," isn't that right? There is no other false answers claimed here except, "I don't remember," or "No."

MR. SARGENT: I believe that's correct, Your Honor.

MR. BURNS: Or perhaps, "I don't recall."

(In open court; jury present.)

THE COURT: Good afternoon, members of the jury. I have your most recent note, which asked me this questions: "Is withholding information the same as making false material declarations?"

That is not such an easy question to answer. I

Conference in Robing Room.

will attempt to deal with your question as follows, and I ask you to listen carefully. And after I have finished, if the answer isn't satisfactory, perhaps you will reframe the question.

To begin with, a witness is expected to give a responsive, full and complete answer to a question. That is what his oath requires as a witness. A witness is not required to volunteer information, that is to say, he need not volunteer information that is not particularly and specifically requested by the very question which is associated with the answer which you are considering. That is to say, with respect to each of the underlined answers, you ought to look at the immediate preceding question, and that will permit you to tell what answer or what information was being elicited from the witness by that question.

Now you will not have a violation of the statute unless the answer given is false. It is not sufficient to establish criminal misconduct in this case simply to show that an answer was true, but incomplete. That would not be a crime to give an answer that was true as far as it went, but incomplete. I think an examination of the underlined answers will show that in most cases the answer or the effect of the answer is "I don't remember," and it would be withholding infor-

Conference in Robing Room.

mation to answer by saying, "I don't remember" if you really do remember. But that would also be a falsity, so I think I would have to answer your question by saying the required element of falsity, giving a knowingly false answer, will not be met unless the answer given is untrue, so far as it goes, and standing on its own feet. If a witness says, "I don't remember" when he does, in fact, remember and does, in fact, know the information, that would constitute a violation. But a witness is not required to volunteer as far as this statute is concerned that you are considering.

Now if there are any further applications to amplify these instructions which either attorney wants to make with me at the side bar, I will hear you at the side bar if you wish.

MR. SARGENT: I have none, Your Honor.

MR. BURNS: I have none either, Your Honor.

THE COURT: I hope I have answered the question for you, but if you want to ask another question, that is what I am here for. Please withdraw and resume your deliberations.

(Note from jury marked Court Exhibit 3.)

(At 2:30 p.m., the jury again retired to continue their deliberations.)

* * *

Sentencing, December 20, 1976.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 -vs-)
)
 WILLIAM G. WRIGHT,)
)
 Defendant.)
 -----)

CR: 76-118

SENTENCE

Before: Hon. Charles L. Brieant, Jr., District Judge
(Sitting by Designation)
Buffalo, New York

December 20, 1976.

For the Government: Theodore J. Burns, Esq.

For the Defendant: Nicholas J. Sargent, Esq.

- - -

THE COURT: Mr. Sargent, is there any reason
why sentence should not be imposed at this time?

MR. SARGENT: None, Your Honor.

THE COURT: Mr. Wright, is there any reason
why sentence should not be imposed at this time?

DEFENDANT WRIGHT: None, Your Honor.

THE COURT: Mr. Sargent, you may be heard in
your client's behalf and present any information in

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mitigation of sentence.

MR. SARGENT: Thank you, Your Honor.

May it please the Court, I believe that a reading of the Probation Report indicates that Mr. Wright has been a positive force to this community and has made some positive contributions to this community.

The report indicates a very close family tie, a good relationship with his wife. It indicates that William Wright has at all times took the initiative to go through high school, college, a Master's Degree, took the initiative to become a police officer, and pursuant to that career, served five years without a blemish.

And as you may recall, Your Honor, we had testimony, character witness testimony, by several witnesses who had worked with Mr. Wright in the community; specifically, a Captain Schelsinger, who was Police Officer Wright's commanding officer. He testified to his character.

We had testimony by the Commissioner of Human Relations, Father Curry, who testified to the positive contribution he has made to our community. Officer Wright has worked in the program where he has been a link between the Police Department and the black and

Sentencing, December 20, 1976.

white community. And I believe that throughout his entire career in life, he has indicated, or would indicate to this Court, that he has been a person that has made a sincere effort to bring about a change in our relations in our community. And I believe that he would like to continue this effort, and certainly, the loss of his job, which has occurred through the official command of the Commissioner of Police, has been a sufficient deterrent to any future conduct that these charges and the conviction have brought to his attention.

I can only say that in deciding whether there be a term of incarceration or a term of probation, that Officer Wright, sincerely in the past, in the present and hopefully in the future, can continue to be what his record indicates, a positive force and making a continued contribution notwithstanding this isolated blemish on the record. And I do firmly believe after numerous conversations with him that he understands what has taken place, and I think this is important, because I know the concern of the Court for this type of incident and this type of charge and conviction. But I can assure you that I know he understands the seriousness of this, and I am certain that what is taking place has sufficiently brought his attention to it, and I could assure this Court that he understands

Sentencing, December 20, 1976.

now that this type of behavior will not be condoned, and he, in fact, would not be repetitive of it.

THE COURT: Mr. Wright, you may be heard in your own behalf, and you may present any information in mitigation of sentence.

DEFENDANT WRIGHT: Thank you, Your Honor.

I would like to say that throughout my life, I have tried to live within the realm of society and put myself up as an example for others to follow. If I understood the severity of the situation, going into the Grand Jury Room, I assure you that I would not be here now. I am truly sorry about this whole incident.

THE COURT: Mr. Burns, does the Government have any comments or recommendations?

MR. BURNS: The Government has no recommendations, but just a brief comment. The crime which the defendant has been convicted of strikes at the very heart of the criminal justice system, which is very apparent. The crime is all the more serious when committed by a police officer who is sworn to uphold the laws. In sentencing the defendant, the Government simply urges the Court to impose a sentence which would have the effect of deterring others in this kind of conduct.

THE COURT: Mr. Wright, I want to advise you that the judgment of conviction to be imposed today is

Sentencing, December 20, 1976.

a final judgment which you have the absolute right of an appeal to the Second Circuit. And further, if you are indigent, and are unable to obtain an attorney for that purpose, that the Court would permit you to appeal without the payment of fees and would ask an assigned attorney be arranged for you.

Have you explained to your client his right to appeal, Mr. Sargent?

MR. SARGENT: Yes.

THE COURT: Do you understand your right to appeal?

DEFENDANT WRIGHT: Yes, sir.

THE COURT: Are you claiming that you are indigent? Are you prepared to continue with the matter?

MR. SARGENT: Yes, we are, Your Honor.

THE COURT: Now I will say a few things on this subject of your sentence here. The Court does regard any interference with the Grand Jury function, regardless who it is, and any lying that takes place in the Grand Jury Room is representing a very serious crime. The administration of justice depends on the investigatory functions of the Grand Jury. When the Grand Jury asks somebody a question, of course, he may claim his privilege against self-incrimination. But if he doesn't do that, and he goes into answer questions, he must answer

Sentencing, December 20, 1976.

truthfully. And it is a matter which the Court regards very seriously, and it is a situation which requires the Court to consider the element of general deterrence in imposing any sentence.

Your sentence here presents a very special problem. Frankly, you have rounded out a very fine career. It is clear to me that you were filling a need in the Buffalo City Police Department and that you were working hard and that you were trying to do right on your job and that you had the respect of the community. And people have testified, and have written letters, and they were quite voluminous. You are ruined as a policeman from now on. If you ever make an arrest and you go in to testify, the first question on cross examination is going to be, "Aren't you the same William G. Wright who was convicted for perjury in the Federal Court?" And you will answer, "It wasn't perjury. It was false declaration." And the attorney cross examining you will look at the jury and say to the Judge, "No more questions," and he will sit down, and your oath and your testimony aren't going to be worth anything.

Ordinarily, the Court would regard your loss of a job as a very serious punishment on you, but I can't really be certain of what the State court will do. As I understand it, you have a petition pending in the

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Supreme Court of Erie County to get your job back, and for my purposes today, I am regarding that petition as having merit. I don't believe Mr. Sargent would file a petition that he thought was lacking in purpose or lacking in merit. I can't tell what the Court there will do with it. But I am assuming for purposes of sentence today that you will be reinstated. You can call it a technicality or whatever you want, but apparently, they didn't give you a hearing. And whether they needed to give you a hearing or not, whether this crime constitutes a felony under State law is a question which this Court ought to leave to the State judges.

It is also a question how soon after the activity they have to give you notice. I am not considering any of those things, but I am telling you and your attorney right now that I am imposing sentence today based on the thesis that you will prevail in your State Court litigation, and if that is resolved against you by the Court, you may come back, and this Court would cut your sentence substantially on the theory that you have been subjected to a pretty terrible punishment by losing your job, and I might say a deserved one, because a policeman has to testify truthfully.

You are sentenced to a term of six months. I will continue you on bail pending appeal. But you are

Sentencing, December 20, 1976.

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welcome to make a Rule 35 motion if that case is resolved against you on the merits by the Court. I am not talking about withdrawing that case but if it is resolved by decision against you, you could make a motion. In fact, you have all your rights under the Rule to make a motion in any event.

MR. SARGENT: Thank you, Your Honor.

THE COURT: You will be continued on your bail pending appeal.

Do you understand your obligations under your bail, do you not?

DEFENDANT WRIGHT: Yes, Your Honor.

THE COURT: That is all.

- - -

Reporter's Certificate.

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true, and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

A. Jake Jacobson

Dated: Rochester, New York
February 15, 1977

Judgment and Probation/Commitment Order.

DEFENDANT WILLIAM G. WRIGHT WESTERN DISTRICT OF NEW YORK

Cr-79-119

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date December 20 1976

COUNSEL ☐ WITHOUT COUNSEL However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Nicholas Sargent
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

There being ~~XXXX~~ verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of Making false material declaration before Grand Jury (Ct. 1), in violation of Title 18, U.S.C., Section 1623

The Court having acquitted defendant on Count Two on October 25, 1976

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) Months.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

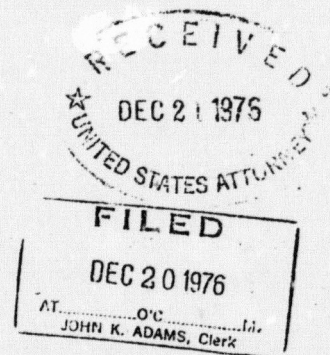
COMMITMENT RECOMMENDATION

SIGNED BY ☒ U.S. District Judge

☐ U.S. Magistrate

Charles L. Briant
CHARLES L. BRIANT, U.S. District Judge
Date December 20, 1976

(Sitting By Designation)



In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

Re: USA vs. William G.
Wright
T-6981

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 23rd day of March, 19 77
I mailed copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

10 Copies to A. Daniel Fusarom Clerk, U. S.
Court of Appeals- 2nd Circuit, New Federal
Court House, Foley Square, New York, NY 10007

2 copies to Richard J. Arcara, U. S. Attorney
502 U. S. Courthouse, Buffalo, NY 14202

Att: Theodore J. Burns Esq.
Asst. U. S. Attorney

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Nicholas J. Sargent Esq., 800 Western Savings
Bank Bldg., Buffalo, NY 14202

Leslie R. Johnson

Sworn to before me this

23 rd day of March, 19 77

Patricia A. Lacey

PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1978